

Committee: FULL COUNCIL

Agenda Item

Date: 24 May 2010

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Title: SCHEME OF DELEGATION

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Summary

1. The Council's Constitution requires the Council to approve a Scheme of Delegation at the first annual meeting of the Council following an ordinary election of councillors. This report is to propose a Scheme of Delegation for the new Council.

Recommendations

2. That members approve the Draft Scheme of Delegation (annexed) with or without amendments.

Financial Implications

3. None. There are no costs associated with the recommendations.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None arising from this report.
Community Safety	None arising from this report.
Equalities	None arising from this report.
Health and Safety	None arising from this report.
Human Rights/Legal Implications	Decisions of committees of officers which are not within the scheme of delegation are subject to legal challenge.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. Local authorities are creatures of statute and can only act within their statutory powers. Some functions are required to be performed by the Council's Executive, others by the Council. The Council has power to delegate performance of its functions in most cases to committees, sub-committees or officers.
7. As a result in the change of governance arrangements from a committee structure to an executive form of administration, the Council will henceforth need two delegation schemes rather than one. The first will be a delegation of functions which are reserved to Full Council by either legislation or the Constitution. The second scheme (which will relate to delegation of executive functions) is to be determined by the Leader in due course.
8. Under the new constitution there will be six committees, namely Development Control, Licensing and Environmental Health, Performance and Audit, Scrutiny, the Staff Appeal Committee and the Standards Committee. Of these the last four named do not require delegated powers, their responsibilities flowing from legislation and from Part 3 of the Constitution (Responsibility for Functions). The Development Control and Licensing and Environmental Health Committees however do require delegated powers. With regard to officer functions, much of what is currently delegated to officers falls within executive functions and will therefore be subject to consideration within the Scheme of Delegation from the executive. The delegated powers contained in the Draft Scheme of Delegation attached to this report relate to council functions only.
9. Although the Council is being asked to approve a scheme of delegation to officers it is open to the committees with delegated powers to amend that scheme insofar as it relates to matters within their remit.

Risk Analysis

10.

Risk	Likelihood	Impact	Mitigating actions
Decisions are challenged on the basis that they are not within Delegated Powers.	3, there is currently increasing scrutiny of the authority of committees and officers to take decisions.	2, in most cases any defect can be rectified by referring the decision up for re-consideration although in some cases the Council	That the Scheme of Delegation be kept under review.

		may face a threat of judicial review.	
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

SCHEME OF DELEGATION OF COUNCIL FUNCTIONS

GENERAL DELEGATION TO COMMITTEES CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS

(In this scheme of delegation chief officers and deputy chief officers have the meanings assigned to them by s.2 Local Government & Housing Act 1989)

The functions of the Council referred to below are delegated to the designated committees and officers.

THE DEVELOPMENT CONTROL COMMITTEE

1. Functions relating to town and country planning and development control as specified in paragraph A Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations) save for power to acquire a listed building in need of repair and to serve a repairs notice under s.47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990
2. Power to create footpaths, bridleways or restricted byways by agreement
3. Power to make public path creation orders
4. Power to make public path extinguishment orders and rail path extinguishment orders subject in each case to confirmation by the Secretary of State
5. Power to divert footpaths bridleways and restricted byways
6. Power to authorise the stopping up or diversion of a footpath, bridleway or restricted byway under s.257 Town and Country Planning Act 1990
7. Power to extinguish public rights of way for planning purposes under s, 258 Town and Country Planning Act 1990
8. Powers in relation to hedgerows under the Hedgerows Regulations 1997
9. Powers relating to the preservation of trees under the Town and Country Planning Act 1990
10. Powers relating to high hedges
11. Powers in respect of common land and town and village greens under the Commons Act 2006

THE LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE

1. Functions relating to licensing and registration in respect of the following matters:-
 - 1.1 animal boarding establishments, dangerous wild animals, dog breeding, performing animals, pet shops, riding establishments and zoos
 - 1.2 game and game dealers
 - 1.3 house to house and street collections
 - 1.4 hackney carriages, private hire vehicles, drivers and operators under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976
 - 1.5 pleasure boats under Public Health Acts Amendment Act 1907
 - 1.6 movable dwellings and camp sites under Public Health Act 1936
 - 1.7 caravan sites under Caravan Sites and Control of Development Act 1960
 - 1.8 scrap yards under the Scrap Metal Dealers Act 1964
 - 1.9 tables, chairs and other items on pedestrian areas of highways under the Highways Act 1980
 - 1.10 sex establishments under the Local Government (Miscellaneous Provisions) Act 1982
 - 1.11 street trading under the Local Government (Miscellaneous Provisions) Act 1982
 - 1.12 acupuncture, tattooing, ear-piercing and electrolysis under the Local Government (Miscellaneous Provisions) Act 1982
 - 1.13 food premises under the Food Safety Act 1990
 - 1.14 operation of loudspeakers under the Noise and Statutory Nuisance Act 1993
 - 1.15 licensable activities under the Licensing Act 2003
 - 1.16 houses in multiple occupation under the Housing Act 2004
 - 1.17 the Gambling Act 2005 to include the power to set fees in accordance with regulations made there under
2. Functions in relation to health, safety and welfare in connection with work and control of dangerous substances to the extent that the functions are

discharged by the authority otherwise than in its capacity as an employer under Part 1 Health and Safety at Work etc Act 1974

3. Functions relating to smoke free premises
4. Power to designate a public place for the purposes of police powers relating to alcohol consumption
5. Power to make or revoke an alcohol disorder zone
6. Power to pass a resolution that Schedule 2 Noise and Statutory Nuisance Act 1993 should apply within the Authority's area

ALL CHIEF OFFICERS & DEPUTY CHIEF OFFICERS

In consultation with the Chairman of the appropriate committee or, where he or she is not available, the Vice Chairman Chief Officers and Deputy Chief Officers have delegated authority to take any action which would normally require committee approval but which requires an urgent decision subject to that action being in accordance with Council policy and within budget. Such a decision is to be reported to the next meeting of the appropriate Committee with a full explanation of the reasons for the decision and the urgency.

THE CHIEF EXECUTIVE

1. The development of the Council's corporate policies.
2. The development of corporate strategies.
3. Public relations and consultation relating to matters which are Council functions.
4. Power to make payments or provide benefits in cases of maladministration
5. All functions delegated to chief officers and deputy chief officers under this Scheme of Delegation

THE ASSISTANT CHIEF EXECUTIVE – FINANCE

1. To certify the annual calculation of the Council Taxbase
2. To certify the draft Statement of Accounts in accordance with the Accounts and Audit (England) Regulations 2011
3. To determine financial administrative procedures and systems pursuant to discharging statutory responsibilities for making arrangements for the proper administration of the Council's financial affairs under the Local Government Act 1972

4. To review and authorise employees' subsistence and expense rates at 1 April each year in line with national agreements or locally approved variations
5. To respond to consultations of a technical nature relating to local government finance and audit matters
6. To provide other certifications and authorisations required of the Section 151 Officer
7. To comment on and approve documents prepared by the External Auditor prior to consideration by the Performance and Audit Committee

THE ASSISTANT CHIEF EXECUTIVE – LEGAL

1. Authorise the institution, defence, withdrawal or compromise of any claims or legal proceedings, civil or criminal including any appeals
2. Authorise officers of the Council to appear on behalf of the Council before courts and tribunals
3. Grant applications for licenses and for registration of premises, persons and vehicles and the amendment or transfer of such licenses or registrations where such applications meet policy guidelines adopted by the Council or the Licensing and Environment Committee
4. Determine whether representations made in respect of licensing matters or applications for reviews of licences are valid or may be rejected as being vexatious, frivolous or repetitious
5. Refusal of licenses and registrations where such applications do not meet policy guidelines adopted by the Council or the Licensing and Environment Committee
6. Issue of statutory notices and certificates
7. Issue of statutory notices, registrations and certificates in respect of charitable collections and gaming
8. To suspend licenses issued under Part II Local Government (Miscellaneous Provisions) Act 1976 for a period not exceeding 2 weeks where there has been a breach of condition or an alleged offence where in the view of the Assistant Chief Executive – Legal a prosecution would not be appropriate
9. To suspend licenses under s.61 Local Government (Miscellaneous Provisions) Act 1976 (as amended) immediately if in his or her opinion it is in the interests of public safety that the suspension should have immediate effect such suspension to last until the day after the next meeting of the Licensing and Environment Committee

10. Subject to the provision of a satisfactory statutory declaration to grant an application for a licence where the Council requires a criminal record check where the applicant is in possession of a check to the level required by the Council which is not more than 18 months old and to revoke any licence if a false declaration is made
11. Subject to the provision of a satisfactory statutory declaration to grant an application for renewal of a licence granted by the Council where the Council requires a criminal record check but a check to the level required by the Council is not immediately available and to revoke any licence if a false declaration is made
12. To grant applications for consent to place tables and chairs and other items on pedestrian areas of the highway subject to conditions where such applications fall within the policy previously adopted by the Licensing Committee or any amendment or amendments thereto made by the Licensing and Environment Committee and to refuse applications which do not fall within that policy

DIRECTOR OF CORPORATE SERVICES

1. Implementation of national provincial and local agreements and amendments to conditions of service
2. The approval of pensionable ill health retirement in consultation with the Leader of the Council or cabinet member authorised by him or her

DIRECTOR OF PUBLIC SERVICES

1. All functions delegated to the Divisional Head of Planning and Building Control under this Scheme of Delegation

DIVISIONAL HEAD PLANNING & BUILDING CONTROL

1. Decide whether: -
 - 1.1 applications are “county matters”
 - 1.2 planning permission is required for development, including Section 64 applications
 - 1.3 environmental impact assessment is required
 - 1.4 listed Building Consent is necessary
 - 1.5 express consent to display advertisements is required.

2. Make comments on: -
 - 2.1 minor proposals submitted by government departments
 - 2.2 Essex County Council and statutory undertakers
 - 2.3 minor proposals submitted for consultation by an adjoining planning authority
 - 2.4 consultations from the Forestry Commission
 - 2.5 consultations from Diocese of Chelmsford on proposals under the Pastoral Measures Act 1983
3. Determine whether prior approval is required for agricultural or telecommunications development.
4. Direct that an outline planning application shall not be considered without the submission of further details, pursuant to Article 7(2) of the Town and Country Planning (General Development Procedure) Order 1995.
5. Determine applications for: -
 - 5.1 minor developments (e.g. householder, changes of use)
 - 5.2 sub division of existing dwellings.
 - 5.3 minor alterations to previously approved plans and conditions
 - 5.4 vehicular and pedestrian access
 - 5.5 changes of use from within class A and of floors above shops in town and village centres from and to residential or vacant from and to residential or A2 or B1 (offices)
 - 5.6 all agricultural developments
 - 5.7 removal of agricultural occupancy conditions where supported by a proven appraisal and previously advertised for 6 months
 - 5.8 temporary caravan or mobile home for agricultural occupation
 - 5.9 overhead power lines
 - 5.10 advertisements
 - 5.11 renewal of permissions where the circumstances are the same, or very similar, to those pertaining at the previous grant of permission including where those permissions have lapsed

- 5.12 replacement dwellings.
 - 5.13 changes of use of up to 1000 sq m
 - 5.14 up to 9 dwellings within DLs in Stansted, Great Dunmow and Saffron Walden and up to 3 dwellings within DLs elsewhere
 - 5.15 refusal for dwellings outside DLs
 - 5.16 barn conversions
 - 5.17 certificates of Lawful Use and Development
 - 5.18 refusals for telecommunications developments
 - 5.19 minor tourist related developments including change of use to overnight accommodation of up to 5 units
 - 5.20 equestrian and equine-related developments where the amount of building, whether new or change of use, is less than 1000 sq m, but where the associated area of land may be greater
 - 5.21 new community and recreation facilities e.g. village halls, play areas and extension to schools and changes of use of agricultural and other land for recreation purposes regardless of the site area.
 - 5.22 minor engineering operations e.g. balancing ponds, flood protection works.
- 6. Decline to determine repeat planning applications in accordance with the provisions of section 43 of the Planning and Compulsory Purchase Act 2004, and amended sections 70A and B of the Town and Country Planning Act 1990, and Sections 81A and 81B of the Listed Buildings Act, 1990.
 - 7. Determine matters reserved by conditions.
 - 8. Make orders for the diversion, extinguishment and creation of public rights of way.
 - 9. Issue revised decision notices for applications previously determined.
 - 10. Determine: -
 - 10.1 confirmation of tree preservation orders
 - 10.2 application and notification to carry out works to tree subject to a tree preservation order within a conservation area, other than those determined by Committee
 - 10.3 hedgerow removal notices.

- 10.4 complaints about high hedges under Part 8 of the Anti-Social Behaviour Act 2003
11. Deal with the operation of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations.
12. Issue: -
 - 12.1 Requisitions for Information
 - 12.2 Planning Contravention Notices
 - 12.3 Notices of Entry
 - 12.4 Building Preservation Notices
 - 12.5 Breach of Condition Notices and take any necessary action arising therefrom.
13. Take enforcement action to secure compliance with conditions of all permissions approved by the Development Control Committee
14. Specify time limits for compliance with an Enforcement Notice and a Stop Notice
15. Institute legal proceedings for:-
 - 15.1 failure to comply with any of the statutory notices referred to in 3.15 above
 - 15.2 failure to comply with an Enforcement Notice or Stop Notice
 - 15.3 unauthorised display of advertisements
 - 15.4 breaches of the Building Act and Regulations
16. The issue and service of Article 4 Directions in conjunction with the Assistant Chief Executive - Legal and, if available, the Chairman or Vice Chairman of the Development Control Committee.
17. The issue and service of enforcement notices and stop notices in conjunction with the Assistant Chief Executive – Legal and, if available, the Chairman or Vice Chairman of the Development Control Committee.
18. The necessary procedure for the service of injunctions in conjunction with the Assistant Chief Executive – Legal and, if available, the Chairman or Vice Chairman of the Development Control Committee.
19. The institution of committal proceedings for breach of an injunction.
20. Organise site visits of the Development Control Committee in advance of meeting of that committee.

21. The promotion of energy efficiency and carbon reduction measures
22. Disability issues appropriate to the facilities and activities within the purview of the Council