

Decision Maker: COUNCIL

Date: Wednesday 15 May 2024

Decision Type: Non-Urgent Non-Executive Non-Key

Title: CONSTITUTION - SCHEME OF DELEGATION TO OFFICERS

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Chief Officer: Tasnim Shawkat, Director of Corporate Services and Governance

Ward: All

1. Reason for decision/report and options

- 1.1 At the annual meeting of the Council each year a Scheme of Delegation to Officers is approved by Council and the Leader. The Scheme is an appendix to the Council's Constitution. Each year the Scheme is updated to address any changes of legislation or officer responsibilities and correct any minor errors. The Scheme was substantially revised and simplified in 2022, and no new delegation or changes of substance are proposed. The revised Scheme is attached as Appendix A.
- 1.2 In addition, Members are recommended by the Monitoring Officer to make two small changes to the Constitution to provide legal clarity relating to the terms of reference of Development Control Committee and the powers of Portfolio Holders. Further details are set out in paragraphs 3.6.and 3.7 below.
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2. **RECOMMENDATIONS**

- (1) That the Scheme of Delegations to Officers in respect of non-executive functions be approved.
- (2) That the Scheme of Delegation to Officers in respect of executive functions be received from the Leader of the Council.
- (3) That the amendment to Chapter 3 of the Constitution to clarify that the relevant Portfolio Holder should decide on reserved matters in the contract documents for the Council's joint housing ventures be approved.
- (4) That the amended terms of reference of Development Control Committee and Plans Sub-Committees be approved (Chapter 5 of the Constitution.)

Impact on Vulnerable Adults and Children

1. Summary of Impact: Not Applicable
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Transformation Policy

1. Policy Status: Existing Policy
 2. Making Bromley Even Better Priority:
(5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: Democratic Services
 4. Total current budget for this head: £402k
 5. Source of funding: Revenue Funding
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Personnel

1. Number of staff (*current and additional*): 6
 2. If from existing staff resources, number of staff hours: Not Applicable
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Legal

1. Legal Requirement: Statutory Requirement: Local Government Act 1972 and subsequent legislation, including the Local Government and Public Involvement in Health Act 2007.
 2. Call-in: Not Applicable: Council decisions are not subject to call-in
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Procurement

1. Summary of Procurement Implications: Not Applicable
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Property

1. Summary of Property Implications: Not Applicable
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: Not Applicable
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Impact on the Local Economy

1. Summary of Local Economy Implications: Not Applicable
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Impact on Health and Wellbeing

1. Summary of Health and Wellbeing Implications: Not Applicable
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Customer Impact

1. Estimated number of users or customers (*current and projected*): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 Section 101 of the Local Government Act 1972 enables the Council to make arrangements for the discharge of Council functions by officers. Similarly, under section 9E of the Local Government Act 2000 the Executive can make arrangements for discharge of executive functions by officers. The Scheme of Delegation to Officers sets out formal delegation of various powers to the Council's chief officers and their staff, and forms part of the Council's Constitution (Chapter 6).
- 3.2 The Scheme enables Council services to function on a day to day basis. The risk of not having a clear and robust scheme of delegation in place is that decisions may not be made by the right people leading to legal challenges to action being taken by the Council. It will also lead to lack of accountability if delegations are not clearly set out.
- 3.3 The Scheme of Delegation was substantially revised in 2022 under the direction of the Monitoring Officer and approved by General Purposes and Licensing Committee and a Member Working Group. The previous scheme was a large and unwieldy document. The review created a more user-friendly, transparent and high-level document setting clear limits for officers.
- 3.4 Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (Functions Regulations), where executive arrangements are in place the law sets out a distinct separation between the Executive and the rest of the Council in relation to how responsibility for local authority functions is exercised. This separation between executive functions and the rest of the Council is established by exception.
- 3.5 The Council's Scheme of Delegation is normally updated for approval at the Council's annual meeting each year, although under the Local Government Act 2000 any executive powers delegated to officers have to be delegated not by the Council, but by the Leader of the Council, and it is open to the Leader to table changes to the executive delegations at any time. This year, the Scheme has been corrected and updated as necessary, with some small changes to post titles and descriptions of services. Some minor clarifications are proposed –
- An additional paragraph at 15.2(l) clarifies the power of the Director of Environment and Public Protection to direct unauthorised campers to leave land;
 - The wording of paragraph 16.5 (b) (vi) has been clarified so that Planning Officers can refuse planning applications in Conservation Areas and Areas of Special Residential Character where there is not a minimum one metre side space between detached buildings.

No new delegations to officers of any substance are proposed.

- 3.6 In reviewing the Scheme, the need for two other small changes elsewhere in the Constitution has been identified. In order to clarify the legal responsibility for taking decisions in relation to reserved matters in the contracts for the Council's joint housing ventures, the following addition is recommended by the Monitoring Officer to Chapter 3 (section 15) of the Constitution – The Leader and Executive –

“Responsibility for making decisions in relation to reserved matters as set out in the contract documents for housing joint ventures including More Homes Bromley LLP, Meadowship Homes 1 LLP and Meadowship Homes 2 LLP will lie with the relevant Portfolio Holder.”

- 3.7 The Monitoring Officer also recommends a small addition to paragraph 1 of the terms of reference of the Development Control Committee and Plans Sub-Committees to clarify that they can deal with applications for reserved matters, details required by condition and non-material amendments (underlined below).

1. **Planning and Conservation and Building Control.** All the Council’s powers and duties relating to town and country planning and development control and building control as specified in Schedule 1 of the Functions Regulations, including, where appropriate, determining cases relating to individual sites, and additionally determining applications for reserved matters for approval, details required by condition and non-material amendments, and to exercise the prior approval functions under Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (call-in still applies,) the granting or refusing of Advertisement Consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) and the granting or refusal of lawful development certificates under Section 191 and 192 of the Town and Country Planning Act 1990.

4. LEGAL IMPLICATIONS

4.1 The power for local authorities to delegate functions to officers is contained in Section 101 of the Local Government Act 1972 in respect of Council functions and section 9E of Local Government Act 2000 in respect of executive functions. The Scheme of Delegation ensures that the Council has in place a fit for purpose scheme to ensure officers can correctly and legally exercise their powers. It also ensures that decisions can be taken by officers on behalf of the Council and the Executive in a timely and efficient manner whilst maintaining full accountability to Members.

Non-Applicable Headings:	Impact on Vulnerable Adults and Children/Policy/Finance/ Personnel/Legal/Procurement/Property/Carbon Reduction/ Impact on the Local Economy/Impact on Health and Wellbeing/Customer Impact/Ward Councillors
Background Documents: (Access via Contact Officer)	Report to Annual Council meeting – 10 May 2023