

Report of the Strategic Director of Place to the Regulatory and Appeals Committee meeting to be held on 30 November 2023

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Subject:

Delegation scheme for Transportation and Highways Decisions 2023

Summary Statement:

This report seeks the committee's approval to replacing the Council's current Transportation and Highways Scheme of Delegation (2017) with an up-to-date scheme for regulation of officer decision-making.

The proposed update of the Scheme of Delegation contains powers and functions which require delegation approval by both the Executive and Regulatory and Appeals committee in order to be fully adopted. Executive have already approved the revised scheme at its meeting on 7 November 2023 and to become fully operational approval of the Regulatory & Appeals Committee is similarly required for those powers which are not Executive functions.

EQUALITY & DIVERSITY

There are no equality and diversity implications arising from the contents of this report. Any decisions taken by officers under the delegated powers conferred by this scheme will take due account of the requirements of equality and diversity issues and obligations of the Council.

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Portfolio:

Planning, Regeneration & Transport

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Overview & Scrutiny Area:

Regeneration & Environment

1. SUMMARY

- 1.1 This report seeks the committee's approval to replacing the Council's current Transportation and Highways Scheme of Delegation (2017) with an up-to-date scheme for regulation of officer decision-making.
- 1.2 The proposed update of the Scheme of Delegation contains powers and functions which require delegation approval by both the Executive and Regulatory and Appeals committee in order to be fully adopted. Executive have already approved the revised scheme at its meeting on 7 November 2023 and to become fully operational approval of the Regulatory & Appeals Committee is similarly required for those powers which are not Executive functions.
- 1.3 This report contains a proposed replacement Scheme for consideration and approval by the committee which addresses recent officer structure changes and the introduction of new legislation and available powers.

2. BACKGROUND

- 2.1 Since its creation on 1 April 1974 the Council has adopted a general scheme of delegation to cover the responsibilities of Committees, Sub-committees and Officers. Regarding the powers given to Officers, the general delegations have given flexibility enabling decisions to be made as efficiently and speedily as possible. Recent trends in challenging decisions taken by officers have shown that the Courts and the Local Government Ombudsman are now requiring greater reassurance that decisions taken within the organisation, particularly decisions by Officers, have a specific and clear underpinning by stated terms of reference.
- 2.2 The current Scheme for Highways and Transportation matters as enclosed in Appendix A and was previously approved on 1 December 2017 and was amended by delegated decision on 21 June 2018 following a restructure of the Planning, Transportation and Highways Service.
- 2.3 The necessity to undertake regular periodic reviews of the Scheme is essential considering both changes to legislation affecting highway authorities but also to ensure that the Scheme reflects the posts which exist within the officer structure of Planning, Transportation and Highways.
- 2.4 The latest revision of the Scheme as proposed in Appendix B has identified several areas of highway operations where further delegation of powers would be beneficial to effective decision making on highways matters, including:
 - a) Use of Community Protection Notices (CPNs) under Section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014 to enable effective enforcement of highway related matters.
 - b) Powers related to the protection of the highway in advance of major infrastructure improvements by statutory undertakers.
- 2.5 New delegations are proposed to roles which have been added to the Planning, Transportation and Highways officer structure since 2018 including:

- a) Delegation of powers to the Principal Engineer (Highway Structures) and Group Engineer (Highway Structures) to facilitate movement of abnormal loads and protection of bridges where works are carried out by others.
- b) Delegation of powers to the new post of Traffic and Enforcement Co-ordinator including the use of DVLA devolved powers.

2.6 The amendments to the Scheme also include minor text corrections and clarifications as to the limitations of delegated powers.

3. OTHER CONSIDERATIONS

3.1 The existence of a specific Scheme of Delegation for Highways and Transportation means that Officer decisions taken in respect of highways matter should be taken by reference to the Scheme alone. Reliance should not generally be made on paragraph 14 Part 2 Articles of the Constitution if the Scheme specifically covers the matter at hand.

3.2 The opportunity of reviewing and amending the current Scheme should be taken to specify clearly what legal powers are being used in taking decisions. However, it was stressed in the report establishing a Scheme of Delegation in November 1988 that vigilance must be maintained on the part of the Council to identify any additional powers give to the local Highway Authority by new legislation. This is to ensure that any adopted Scheme remains relevant and is used to its full effect where new powers and legislative arrangements change.

3.3 The proposed scheme contains a range of delegations which are both functions which the Executive can delegate as well as functions which have been devolved to the Regulatory and Appeals Committee.

3.4 Executive considered the proposed scheme of delegation at their meeting of 7 November and approved adoption of those specific executive functions within the scheme (indicated by (ED) adjacent to the delegation entry). This separate approval of the Regulatory and Appeals committee to the proposed scheme is necessary before the new scheme can become operational and covers those other powers and functions not suffixed with the '(ED)' reference.

3.5 New entries and minor text alterations are indicated by italic text in the proposed scheme. Deletions of previous delegations as shown using crossed out text for minor alterations and where specific whole delegations are being deleted the delegation is prefaced by '(DELETED)'.

Specific requirements in relation to Officer decisions

3.6 In recognition of the need to ensure that Ward Members are appraised of delegated decisions being taken affecting their ward some provisions require prior notification to be given by the Officer taking the decision. Such requirement is indicated by an asterix (*).

3.7 Where a decision must first be referred to a Ward Member, who can object to the decision being taken by delegation, the scheme recognises that the matter should be

referred to the appropriate Area Committee for determination. Functions and powers where such referrals are permitted are indicated by a double asterisk (**) against the specific provision.

- 3.8 Some delegated decisions also require prior notification to the Chair of the appropriate Area Committee to be provided by the Officer. Again, where the Chair does not support the matter being considered via delegated decisions the matter can be referred to the Area Committee for determination. Such delegations are indicated by a '†' suffix.
- 3.9 In both circumstances set out in paragraphs 3.6 to 3.8 above where the Officer has been advised that the matter is to be referred to the appropriate Area Committee the delegated powers will no longer apply.
- 3.10 In accordance with the requirements of regulation 7 of the Openness of Local Government Bodies Regulations 2014 several delegations are subject to the requirement to formally record their determination. Such decisions are suffixed (W) in the Scheme. In accordance with regulation 8 records of background papers together with the formal decision record will be published on the Council's website.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 An effective and up to date Scheme of Delegation will assist the Council in achieving effective and efficient decision making in relation to responding to service requests relating to highways and transportation matters.
- 4.2 The incorporation of wider delegated powers for taking positive action on highway enforcement matters will also reduce the financial burden of such activity on the revenue budgets of the Council through allowing timely and expeditious action to be taken.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 A fully detailed and updated Scheme of Delegation will help establish the transparency of decision making.

6. LEGAL APPRAISAL

- 6.1 The Local Government Act 1972 sets out tiered levels of decision making in local government. The Local Government Act 2000 gives various models that potentially depart from the traditional system, but essentially one requirement of transparency as to where and how decisions are taken is given even more emphasis. Decisions can be made with respect to a local authority by:-

- a) The Council Meeting of all its Members,
- b) The Executive,
- c) A committee established by the Council or the Executive,
- d) A sub-committee, or
- e) An officer.

Officers can be empowered to make decisions by:

- a) The Council itself,
- b) The Executive,
- c) The Committee, or
- d) The sub-committee.

- 6.2 Some specific highway powers and duties are matters for the Council; these have been sub-delegated to regulatory and appeals committee. The detailed list is contained in the Local Authorities (Functions and Responsibilities) (England) regulations 2000. Any other highway powers are for the executive. Approval of the officer scheme of delegation, which contains a mix of regulatory and non-regulatory powers therefore requires approval by both the Executive and Regulatory and Appeals Committee.
- 6.3 This scheme of delegation may require further amendment arising from any findings of a wider review of the Council's constitution.

7. OTHER IMPLICATIONS

Sustainability Implications

- 7.1 There are no sustainability implications arising from this report.

Tackling the Climate Emergency Implications

- 7.2 There are no climate emergency implications arising from this report.

Community Safety Implications

- 7.3 Effective and timely decisions in relation to highway enforcement matters can have a positive impact on the safety of the highway network for all users. The proposals contained within this report provide an efficient and effective structure within which timely decisions can be made.

Human Rights Act

- 7.4 The Human Rights Act 1998 provides a legal basis for concepts fundamental to the rights of people. The proposed Scheme specifically requires Officers to take account of Human Rights issues when making decisions.

Trade Union

- 7.5 There are no trade union implications associated with this report.

Implications for Children and Young People

- 7.6 Whilst there are no direct implications for children and young people in the approval of the revised scheme of delegation sought it should be noted that some of the delegations under the scheme relate to matters which could affect children and young people's use of the highway. Where such decisions are taken under the scheme due consideration will be given to these implications.

Issues Arising from Privacy Impact Assessment

- 7.7 There are no issues arising in relation to the privacy impact assessment pertaining to the contents of this report.

8. NOT FOR PUBLICATION DOCUMENTS

- 8.1 None

9. OPTIONS

- 9.1 The Regulatory and Appeals committee may decide to approve the proposed 2023 Scheme of Delegation as outlined in this report, or
- 9.2 Alternatively, that the Regulatory and Appeals committee may decide to only approve specific non-Executive powers in the replacement Scheme in which case these powers will be removed from the final version of the scheme adopted.

10. RECOMMENDATIONS

- 10.1 That the Regulatory and Appeals Committee approves the adoption of the replacement Scheme of Delegation for Highways and Transportation matters as set out in Appendix B of this report in substitution for the current Scheme of Delegation for Highways and Transportation matters as set out in Appendix A of this report in so far as the powers listed in the revised Scheme of Delegation are non- Executive functions.
- 10.2 That the revised Scheme of Delegation as set out in Appendix B will become operative only if, and when, approved by both Executive and Regulatory and Appeals Committee and the provisions of the previous Scheme of Delegation as set out in Appendix A will then be revoked.
- 10.3 That the revised Scheme of Delegation shall remain in force until such time as it may be substituted, modified, varied, or repealed by decisions of the Executive or Regulatory and Appeals Committee or such person or body inheriting the powers of the Executive or Regulatory and Appeals Committee.

11. APPENDICES

- 11.1 Appendix A – Scheme of Delegation for Highways and Transportation Matters operational from 21 June 2018.
- 11.2 Appendix B – Proposed replacement Scheme of Delegation 2023.

12. BACKGROUND DOCUMENTS

Local Government Act 1972

Local Government Act 2000

The Openness of Local Government Bodies Regulations 2014.

The Council's Constitution