

Surrey Heath Borough Council
Council
23 February 2022

Governance Working Group

Head of Service Gavin Ramtohal – Head of Legal & Democratic Services
Report Author: Rachel Whillis – Democratic Services Manager
Key Decision: No
Wards Affected: n/a

Summary and purpose

To review the Terms of Reference of the Executive, Committees & Other Bodies and the Scheme of Delegation of Functions to Officers in line with the programme of review of the Constitution.

Recommendation

The Council is advised to RESOLVE that

- (i) the Terms of Reference of the Executive, Committees and Other Bodies be updated, as set out at Annex A to this report; and
- (ii) the Scheme of Delegation of Functions to Officers in respect of non-executive functions be updated, as set out at Annex B to this report.

1. Background and Supporting Information

1.1 The review of the Terms of Reference of the Executive, Committees and Other Bodies (TOR) and the Scheme of Delegation of Functions to Officers (SODOFTO) forms part of the holistic review of the Constitution being undertaken by the Monitoring Officer.

1.2 The Governance Working Group considered these items at its meeting on 28 January 2022 and is proposing the recommendations in this report.

2. The Terms of Reference of the Committees

Determination of large scale planning applications

2.1 The Constitution currently provides that, in exceptional circumstances, the Full Council can determine large-scale planning applications relating to land owned by the Council, or elsewhere if the proposed development is likely to

have a very significant impact on the community, as determined by the Head of Planning, after consultation with the Leader of the Council and Chairman of the Planning Applications Committee.

- 2.2 The Working Group was asked to consider a recommendation from officers to delegate these matters to the Planning Applications Committee and remove any relevant references to the Full Council determining such applications from the Constitution. This had been proposed as it was felt that the Planning Applications Committee's regulatory format provides more appropriate governance arrangements for determining planning applications. In particular, the Planning Applications Committee was considered more appropriate in relation to the appropriate separation between regulatory and executive functions and embedded training for decision making on planning matters.
- 2.3 The Working Group considered the proposal and acknowledged the position presented by officers. Members also recognised the requirement for mandatory training for councillors prior to hearing any major planning applications. Having expressed views that the Council should continue to determine applications that had a borough-wide impact, the Group agreed to maintain the current arrangements. The Working Group also asked officers to consider what additional support could be provided to the Mayor when hearing major planning applications.

The Executive

- 2.4 An additional sentence has been added to the Executive's TOR to clarify that, at present, any executive decisions not delegated to officers are made collectively by the Executive. This addition has been inserted for the purpose of clarification only and it remains the Leader's responsibility to determine how executive functions are operated.

Scrutiny Committees

- 2.5 The TOR for the Scrutiny/ Select Committees have been amended to simplify their areas of remit and remove reference to matters which do not constitute a TOR, for example, setting the work programme, though it must be noted that this does not mean the Committee will cease to undertake such functions. The Working Group also recognised that removing lists of specific functions from the Performance and Finance's TOR would broaden was intended to broaden
- 2.6 Changes have been proposed to the External Partnerships TOR to focus its remit on more strategic areas of concern for the Council, such as grants, Registered Social Landlords and local health partners. The Committee will remain the designated Crime and Disorder Committee.
- 2.7 The Working Group discussed the External Partnerships TOR and agreed that the revisions should be made as an interim measure, but a further review of this committee's remit should be undertaken at a future meeting.

Employment Committee and its Sub Committees

- 2.8 The Employment Committee's TOR have been reviewed and have been amended following consideration about how processes will be expected to be undertaken in practice.
- 2.9 A number of references in TOR of the Employment Committee's Sub Committees have been transferred to the Committees, Sub Committees and Other Bodies Procedure Rules, alongside additional information on quorums for their meetings, which will be reviewed in the next phase of the review.
- 2.10 It is proposed to amend the TOR to clarify that, following an initial review by the relevant officer, any grievance or disciplinary about a statutory officer will be automatically referred for investigation, rather than requiring a subcommittee to determine whether to appoint an investigator. This affords a level of scrutiny that should be expected for these positions. Furthermore, it reduces the number of committee members required for different stages of the process.
- 2.11 It is also proposed that a decision to suspend a statutory officer will be referred to a Hearing Sub Committee rather than the Employment Committee, thus ensuring that the entire committee is not precluded from hearing any future discussions on that matter. In addition, the Appeals Sub Committee's TOR have been extended to include where a senior officer is appealing a decision made by the Employment Committee.
- 2.12 These TOR have been reviewed with the Head of HR, Performance & Communications and the HR Manager and it is recognised that related HR policies will need to be reviewed to ensure consistency across the documents.

3. The Scheme of Delegation

The Scheme of Delegation and its General Principles

- 3.1 The Scheme of Delegation of Functions to Officers (SODOFTO) has been amended to reflect changes to the senior management structure.
- 3.2 In addition, wording has been added to state clearly that a matter being delegated does not preclude the matter being referred to Members if considered appropriate by the officer. This is not a new position but simply clarifies any concerns that might arise.
- 3.3 An additional paragraph has been inserted which seeks to clarify how new policies, along with amendments to policies, are managed as this is a matter that requires clarification. Additional wording has also been inserted in relation to the awarding of contracts.
- 3.4 An additional delegation has been proposed to enable officers to respond to consultations in a timely manner. Such consultations often have short

timescales in which to prepare a response. The oversight by Members, including the Portfolio Holder, provides for such matters to be referred to the Executive or committee where they consider appropriate and time permits. A section has also been added to clarify that officers may make speculative bids for grants where there is no commitment for any additional resource at that stage.

Amendment to delegations

- 3.5 Amendments to a number of delegations have been made to clarify or update wording and references.
- 3.6 It is proposed to remove the requirement to consult the Chairman of the Employment Committee on the membership of a sub-committee. In practice, the need to arrange meetings in short timescales makes this difficult. It is also inconsistent with the appointment memberships for other sub-committees.
- 3.7 The Head of Planning's main delegation referring to the items reserved to Planning Applications Committee has been updated in respect of current and previous councillors and officers, to bring it in line with the requirements in the Planning Code of Practice.
- 3.8 The Working Group discussed a proposal to alter the Head of Planning's generic delegation to authorise him to agree any applications or 10 or more dwelling houses or flatted developments, or non-residential development of 1000 sq metres or more, where the officer recommendation is to refuse the application. The delegation currently reserves these decisions to the Planning Applications Committee, whether the recommendation is to approve or refuse the application. Having reviewed the suggestion, the Working Group agreed not support this recommendation. However, the Group acknowledged there could be opportunities to reduce less controversial items being considered by the Committee and suggested the Head of Planning and the Chairman and Vice Chairman of the Planning Applications Committee further discuss this matter.

4. Reasons for Recommendation

- 4.1 The changes to the Scheme have been proposed to address any gaps or inconsistencies, rationalise processes and add procedures that enable further efficiencies in decision making.

5. Proposal and Alternative Options

- 5.1 It is proposed that the Council reviews the amendments proposed by the Working Group and suggests any changes as appropriate.

6. Contribution to the Council's Five Year Strategy

- 6.1 No matters arising at this time.

7. Resource Implications

- 7.1 There are no specific resource implications arising from the review.

8. Legal and Governance Issues

- 8.1 The delegation of non-executive functions to officers can only be agreed by the Council and the Council is therefore only asked to comment and agree the delegations marked as 'non-executive functions'. The delegation of executive functions to officers is the responsibility of the Executive and cannot be agreed by the Council, but these delegations have been included for completeness. Only the Council can make amendments to the TOR.
- 8.2 These documents are integral to the Council's structure for decision making and it is important that they remain fit for purpose. Furthermore, as decisions can only be made in line with the authority provided to the committee or officer, it is essential that the terms of reference of committees and the SODOFTO provide the necessary authority for the member decision making bodies or officers, as relevant, to effectively perform their roles.
- 8.3 As part of the previous review of the SODOFTO in 2014, a new approach was undertaken whereby many of the delegations (particularly those from the Planning Applications Committee, the Licensing Committee and the Council in relation to HR functions) would be dealt with on an exceptions basis, i.e. the decisions to be made by the Committee have been identified and reserved to that Committee. Officers are authorised to take all remaining actions relating to that function. This approach has been continued and extended where possible, as it is felt it provides a more flexible and responsive Scheme.

9. Monitoring Officer Comments:

- 9.1 Article 12 of the Council's Constitution recognises the Monitoring Officer's duty to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

10. Other Considerations and Impacts

Environment and Climate Change

- 10.1 No matters arising at this time.

Equalities and Human Rights

- 10.2 No matters arising at this time.

Risk Management

- 10.3 No matters arising at this time.

Community Engagement

10.4 No matters arising at this time.

Annexes

Annex A- Proposed Terms of Reference of the Executive, Committees and Other Bodies

Annex B – Proposed Scheme of Delegation of Functions to Officers

Background Papers

None