

# GOVERNANCE COMMITTEE

10 September 2015

**Subject Heading:**

**Changes to delegated powers –  
Regulatory Services**

**CMT Lead:**

**Andrew Blake-Herbert** – Group Director  
Communities and Resources

**Report Author and contact details:**

**Patrick Keyes** – Head of Regulatory  
Services x2721

**Policy context:**

Monitoring Officer Amendments to the  
Constitution

**Financial summary:**

The described changes to delegated  
powers would have no material financial  
implications.

**The subject matter of this report deals with the following Council Objectives**

Havering will be clean and its environment will be cared for [X]

People will be safe, in their homes and in the community [X]

Residents will be proud to live in Havering [X]

## SUMMARY

On 1<sup>st</sup> July, the committee deferred decision on this item, in particular the proposed change to Section 3.6.6 (b) (vi) for clarification on development in the Green Belt. In addition it is further proposed to change Section 3.6.6 (u) in relation to Certificates of Lawful Development for existing development. Following a review the Head of Regulatory Services has identified one area of operational activity – power to deal with deliberate concealment of planning breaches which would benefit materially from changes to delegated powers to enable more effective and efficient service delivery. Due to a change in legislation a change to the wording of power to enter into S106 obligations is also recommended.

**RECOMMENDATIONS**

That the Committee **recommend to Council** that the following changes be incorporated into Section 3.6.6 of the Constitution relating to the Head of Regulatory Services.

- 1) New Section 3.6.6(cc) to read:

*“To apply to the magistrates court for a Planning Enforcement Order in accordance with Sections 171BA to 171BC of the Town and Country Planning Act 1990.”*

- 2) Section 3.6.6(b) (vi) be altered to:

*“carry out residential development where the number of additional dwellings does not exceed two, including proposals which require prior completion of a Unilateral Undertaking committing the applicant to pay a contribution to mitigate the impact of the development on infrastructure, the latter involving liaison during the process between Head of Regulatory Services and Head of Legal Services.”*

- 3) Section 3.6.6(u) be altered to:

*“To issue Certificates of Lawfulness for existing and proposed development and use”*

**REPORT DETAIL**

**Background**

The last report to this committee was deferred for clarification on the proposed changes in relation to the Green Belt. In terms of clarification, no changes in relation to the decision level in regard to Green Belt development is proposed. The current wording in the Constitution states “To approve any application for development throughout the borough including the Green Belt in accordance with the current development plan and other material legislation and which proposes to.....”. Reference to the Green Belt is qualified by having to be in accordance with the current development plan. Therefore any development proposed in the Green Belt can only be decided at delegated level if it accords with the development plan – any inappropriate development in the Green Belt would need to be reported to the Regulatory Services Committee if recommended for approval.

A further change to the constitution is requested in relation to Certificate of Lawfulness. The previous report is reproduced below with addition of Section 3.

## **Report**

As part of on-going reviews of operational efficiency the Head of Regulatory Services has identified an enforcement related activity which would materially benefit from changes to delegated powers. The intended outcome is more efficient and effective service delivery as explained in the rationale described below. In addition a change to the existing delegated power to determine planning applications for up to two additional dwellings is proposed, reflecting a change in legislation.

### **1. Power to Apply for Planning Enforcement Order**

#### **1a) *Existing Position***

Sections 171BA of the Town and Country Planning Act 1990 was introduced by the Localism Act 2011. This gives the local planning authority power to apply to the Magistrates' Court for a "Planning Enforcement Order" and to take enforcement action under said order. An application can be made in the circumstances where the local planning authority has evidence that a breach of planning control has been deliberately concealed in an attempt to avoid enforcement action and to render the development lawful by passage of time. A Planning Enforcement Order will allow the Council to take planning enforcement action i.e. issue an enforcement notice or planning contravention notice, within a year of the date of the Order even though the usual period for taking enforcement action has expired.

Currently there are no delegated powers for the Head of Regulatory Services to apply to the magistrates court for an order.

#### **1b) *Proposed Change***

It is proposed to delegate power to the Head of Regulatory Services to enable planning enforcement orders to be obtained from the magistrates court.

#### **1c) *Rationale for Changes***

Delegated powers already exist for the Head of Regulatory Services to serve enforcement notices. The Localism Act 2011 included powers to deal with cases where breaches of planning control were deliberately concealed. The Council would need to demonstrate to a magistrate that this is the case. It is not therefore considered necessary to involve Members in a decision as to whether the breach has been concealed or not as this is more of a legal judgement. It is therefore requested that this additional power be added to the delegated powers in the constitution.

**2. Power to Determine Applications for up to 2 new dwellings**

**2a) *Existing Provisions***

Section 3.6.6(b)(vi) states:

*(b) "To approve any application for development throughout the borough including the Green Belt in accordance with the current development plan and other material legislation and which proposes to:"....*

*"(vi) erect residential development where the number of dwellings does not exceed two, including proposals which require prior completion of a Unilateral Undertaking committing the applicant to paying the Council's Infrastructure Tariffs, the latter involving liaison during the process between Head of Regulatory Services and Head of Legal Services. "*

**2b) *Proposed Change***

It is proposed that delegated powers are clarified so that firstly it is clear that it applies to conversions, not just new build and secondly that it applies where the increase in the number of dwellings proposed does not exceed two. Further changes are required so that there is no longer a reference to tariff reflecting changes in the Community Infrastructure Levy Regulations 2010 that came into effect in April 2015.

**2c) *Rationale for Changes***

The current wording of the existing power refers to proposals to "erect" residential development. Taken literally, this would exclude quite a number of minor residential proposals that are received that involve limited or no new physical development, most commonly flat conversions or change of use of premises to residential use. Where these involve two or fewer dwellings, the issues and impacts are likely to be similar to proposals for new development and therefore it is recommended that the definition be widened to include all development. Furthermore, there are often proposals where the number of dwellings proposed is more than two, but the overall increase in total dwelling numbers is less than two. Again, it is considered that the planning issues would be very similar to a two dwelling new build proposal and it is recommended that the wording be changed to reflect this.

In 2013, the Council adopted its Planning Obligations Supplementary Planning Document which sought to apply a tariff style contribution to all development that resulted in additional residential dwellings, with the contributions being pooled for use on identified infrastructure. There has been a recent change to the effect of the CIL Regs in that from 6th April 2015, Regulation 123 of the CIL Regs states that no more than 5 obligations can be used to fund particular infrastructure projects or infrastructure types. As such, the SPD, in terms of pooling contributions, is now out of date, although the underlying evidence base is still relevant and up to date for the purposes of calculating the revised S106 contributions. Where appropriate, contributions would still be sought for new residential development where there was an

impact on particular infrastructure – therefore it is recommended that the wording of the power be changed to reflect that a tariff based contribution would no longer be sought.

3. **Power to Determine Applications for Certificates of Lawfulness**

2a) ***Existing Provisions***

Section 3.6.6(u) states:

*(u) To issue (a) Certificates of Lawfulness for proposed development and use; and (b) Certificates of Lawfulness for existing development and use after consultation with the Director of Legal & Governance.*

2b) ***Proposed Change***

It is proposed that reference to consult with the Director of Legal & Governance in relation to Certificates for existing development be removed.

2c) ***Rationale for Changes***

The requirement to consult with Legal on all applications for certificate of existing use applications adds to unnecessary delay where in many cases the applications are straightforward and not complex involving an assessment of the facts and reference to legislation. Where necessary, for example where case law is relied on or the site has a particularly complex history, legal advice will be sought before issuing a certificate.

**Financial implications and risks:**

The described changes to delegated powers would have no material financial implications.

**Legal implications and risks:**

There are no material legal implications. The Planning Service would continue to seek and incorporate Legal Advice where necessary.

**Human Resources implications and risks:**

There are no material implications.

**Equalities implications and risks:**

There are no direct equalities implications arising from this report. Where relevant, the Planning Service would continue to seek and incorporate advice from the Council's Corporate Policy and Diversity team.

**BACKGROUND PAPERS**

None