

COUNCIL

10 NOVEMBER 2022

SCHEME OF DELEGATIONS

Portfolio Holder: Councillor Howard Doe, Portfolio Holder for Housing and Community Services

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Mark Breathwick, Head of Strategic Housing

Summary

This report seeks the approval of Full Council to amend the delegations to officers to provide clarity regarding the decisions that are covered.

1. Budget and policy framework

- 1.1. The approval of delegations in relation to the Council's Caravan and Mobile Home Licensing functions is a matter for Full Council.

2. Background

- 2.1. Section 101 of the Local Government Act 1972 allows the Council to arrange for the discharge of its functions by an officer of the authority. The current delegations in respect of the housing functions for Private Sector Housing are set out at paragraph 8.27 of the employee scheme of delegation.
- 2.2. It has recently come to our attention that there is a gap in the current employee scheme of delegation in respect of the Caravan and Mobile Homes Licensing.
- 2.3. Delegation is sought to clarify the Constitution and make it clearer what decisions are covered. This will ensure that officers are clear as to the limits of their powers and that the Council is adequately protected. Delegations will also ensure that the Council is able to continue making decisions in these areas, some of which are statutory functions with tight deadlines.

3. Options

- 3.1. Full Council is being asked to approve delegations in the attached appendix, Members could choose not to issue delegations however this would lead to a

risk that the constitution remained unclear and there could a legal challenge of the decisions.

3.2. Option 1 Full Council agree to the delegations.

3.3. Option 2 Do nothing.

4. Advice and analysis

4.1. Option 1 is recommended. This will ensure that the Council can continue to exercise its statutory functions for Caravan and Mobile Homes Licensing and will minimise the risk of any legal challenge to the validity of the decision.

4.2. Option 2 is not recommended as this will leave the Council at risk of a legal challenge to the validity of decisions.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Failure to issue delegations	Leaving the delegations in the current form will mean that they continue to be unclear leading to a potential risk of challenge to the validity of the Council's decisions.	Amend the delegations.	D1

Likelihood	Impact:
A Very high B High C Significant D Low E Very low F Almost impossible	1 Catastrophic (Showstopper) 2 Critical 3 Marginal 4 Negligible

6. Climate change implications

6.1. The recommendation has no climate change implications.

7. Financial implications

7.1. There are no direct financial implications to the decision to amend the delegations. If, however the delegations are not amended there is a risk of

challenge to the validity of the Council's decisions which if successful would require the Council to pay costs.

8. Legal implications

- 8.1. The Council can arrange for the discharge of its functions under the Local Government Act 1972. This is currently dealt with by way of delegations within the employee scheme of delegation contained in the Constitution.
- 8.2. Any decisions made without delegated authority will automatically be ultra vires and therefore unlawful. If the decision is challenged, then the Council will be unable to defend such a decision and will be liable to pay legal costs.
- 8.3. The decisions relate to the licensing and management of caravan and mobile homes of which there are 6 sites in the Council's area. In order to minimise the risk of challenge to the use of any powers by the Council it is necessary to ensure that any adoption of powers and subsequent delegation to officers has a clear audit trail.

9. Recommendation

- 9.1. It is recommended that authority be delegated to the Director of Place and Deputy Chief Executive to exercise and to delegate to officers at an appropriate grade the functions set out in the attached appendix.

10. Suggested reasons for decisions

- 10.1. The amendments to the delegations be made to reduce the risk of legal challenge to the exercise of the Council's functions.

Lead officer contact

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Appendices

Appendix 1 – suggested amended delegations.

Background papers

None.