

To: Council

Date: 24 June 2013

Item No:

Report of: Head of Law and Governance

Title of Report: Changes to Council's constitution

Summary and Recommendations

Purpose of report: To propose miscellaneous changes to the Council's constitution.

Report Approved by:

Finance: Nigel Kennedy

Legal: Jeremy Thomas

Policy Framework: None

Recommendation(s): That the changes to the whistle blowing policy and the Council scheme of delegation as detailed in the report be approved with immediate effect.

Whistle blowing policy

1. The Council is required to have a whistle blowing policy under the Public Interest Disclosure Act 1998 (inserted into the Employment Rights Act 1996). This enables whistleblowers to "blow the whistle" on customs or behaviour of legitimate concern to the whistleblower, including concerns about the commission of a crime, civil offence or similar. The whistleblower is then afforded legal protection such as from suffering detriment and/or dismissal.
2. The Enterprise and Regulatory Reform Bill 2013 introduces a requirement that the whistleblower must raise their concern in the public interest in order to gain protection (this replaces the current requirement to make a

disclosure in 'good faith'). However, if an employment tribunal thinks that the disclosure was made in bad faith, then it will have the power to reduce compensation by up to 25%. 'Public interest' is not defined, but it probably means something that affects a class of people and not just one individual. The policy has been amended to reflect these statutory changes and other minor miscellaneous changes have been made. The revisions are shown in bold and underlined in the Policy which is attached as Appendix 1 to this report.

Council scheme of delegation - planning

3. Recent changes to permitted development rights for dwelling house e extensions allow larger extensions subject to a potential prior approval procedure. The Applicant must give details to the Council. The Council must then in turn give notice to adjoining owners and occupiers who must be given at least 21 days to object. If an adjoining owner or occupier objects the prior approval of the Council is required as to the impact of the proposal upon adjoining premises.
4. In order for this prior arrival process to prevent the development proceeding, notice that prior approval is required and refused must be given to the applicant within the 42 day period starting with the day after the application was made. (This is similar to certain telecoms permitted development rights in respect of which there is currently specific provision in the constitution.)
5. As it may not be known whether prior approval is required until less than 21 days of the 42 day period are left it is not practical for these approvals to be referred to committee. Given this and the undesirability of objectionable development proceeding by default, it is recommended that these applications be excluded from the provisions that would otherwise require their determination by committee.

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Background papers: None

Appendix 1

25 WHISTLE BLOWING POLICY

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25.1 Who can use this policy?

This policy is for Council officers whether they be full or part-time employees, secondees, casual workers or volunteers, or contractors. Members of the public can use the Council's complaints procedure or complain to the ombudsman.

25.2 What does this policy apply to?

This policy applies to anything illegal, improper, unethical or wrong that is done by:

- officers
- Councillors
- co-opted committee members
- anyone representing the Council
- partner organisations
- contractors, consultants or other suppliers.

Examples would include a criminal offence, fraud or corruption, damage to the environment, theft or misuse of public money or failure to follow the Council's finance, contract or other rules.

The Council has other policies and procedures, for example on recruitment and selection, discipline, grievances, **bullying and harassment** and diversity. The

whistle blowing policy should only be used when other policies are inappropriate.

25.3 Purpose of whistle blowing policy

Officers with serious concerns about any of the Council's work **or activities** are expected to blow the whistle. This policy:

- encourages officers to blow the whistle within the Council rather than say nothing or take their concerns elsewhere
- protects whistle blowers from reprisals as long as they have acted honestly **and in the public interest**
- provides a procedure for whistle blowing
- ensures whistle blowers get a response
- gives advice on what to do if the response is not good enough.

25.4 Protecting the identity of whistle blowers

The Council cannot guarantee to protect the identity of whistle blowers as it may, during an investigation, have to say where it got its information from and disclose the original complaint. The whistle blower may also have to act as a witness in any subsequent hearing.

25.5 How will the Council protect whistle blowers?

The Council will protect whistle blowers from reprisals as long as they had a reasonable belief that the allegations were true and made them in good faith. Reprisals will be treated seriously as a disciplinary offence and dealt with through the disciplinary procedure. Where workers blow the whistle but do not cite the policy they will still be protected under it.

The Council will try to minimise any difficulties resulting from whistle blowing. For example, it will advise whistle blowers about the procedure if they have to act as witnesses.

25.6 Anonymous allegations

This policy encourages workers to put their names to allegations but the Council may investigate allegations made anonymously. In deciding whether to investigate an anonymous allegation, the Council will consider how serious it is, whether it is believable and whether evidence can be obtained from a non-anonymous source.

25.7 Untrue allegations

Workers will not suffer reprisals for making allegations that turn out to be untrue, as long as they had a reasonable belief that the allegations were true and made them in **the public interest**.

Allegations that are made without a reasonable belief as to their truth or not made in **the public interest are likely to** be treated as a disciplinary offence and dealt with through the disciplinary procedure.

25.8 Role of trade unions and professional associations

Workers can raise concerns themselves or ask their trade union or professional association to act on their behalf. Whistle blowers can bring a trade union or professional association representative or a friend **with them to meetings**

25.9 How do workers blow the whistle?

(a) Saying that the whistle blowing procedure is being used

The whistle blower should wherever possible make it clear from the start that they want to use the whistle blowing procedure.

(b) Putting concerns in writing

Whistle blowers should wherever possible put their concerns in writing, giving as much detail and including relevant dates. Whistle blowers are not expected to prove that their allegations are true but they need to show that there are reasons for **raising their concern and it was made in the public interest**. If a whistle blower does not feel they can put their concerns in writing, they can be interviewed instead – see 25.10(c).

(c) Who should whistle blowers go to with their allegations?

Whistle blowers should normally go to their line manager or head of service but if the whistle blower does not want to go to their line manager or head of service, they can go to the chief executive, a director, the Monitoring Officer, the Chief Finance Officer or the Head of Human Resources and Facilities.

If the whistle blower suspects fraud or corruption, they can also go to the Council's internal auditors or to the Council's **appointed** external auditors who are **currently Ernst and Young. LLP**

25.10 How will the Council respond to whistle blowing?

(a) Notification of allegation

Upon receipt of an allegation under this policy the person receiving the allegation must **immediately** notify the Monitoring Officer, the Chief Finance Officer and the Head of Human

Resources and Facilities (unless the allegation relates to **one or more** of them).

(b) Appointment of an officer to investigate

The person receiving the complaint will agree, in consultation with the Monitoring Officer, the Chief Finance Officer and the Head of Human Resources and Facilities how (unless the allegation relates to one **or more of them**) the allegation will be investigated and write to the whistle blower within 10 working days. The letter should:

- acknowledge that the whistle blower has used the whistle blowing policy
- say how their concern will be dealt with and how long they think this will take
- tell them whether any initial enquiries have been made
- say what further action will be taken (or say why no further action will be taken)
- Tell them they have the right to bring someone with them to any meetings they have to attend about the allegation.

(c) Interviews

If the whistle blower has not put their concerns in writing, they may be interviewed. A summary of the interview will be made which **should** be signed by the person conducting the interview and the whistle blower.

(d) Further action

After preliminary investigation the Council will take further action if the investigation officer decides it would be in the public interest to do so. Further action may include:

- Arranging an investigation by management or internal auditors
- Arranging a disciplinary process
- Referring allegations to the police
- Referring allegations to the external auditor
- Arranging an independent inquiry if the allegations are very serious or complicated

(e) Response to whistle blowers at the end of the investigation

If the law allows, the Council will tell the whistle blower the outcome of any investigation within 10 working days of it ending.

25.10 (f)

Whistleblowers are encouraged to obtain support and advice that may include their Trade Union representative or HR team contact, a designated representatives for bullying and harassment or the charity Public Concern at Work, the whistleblowing charity, which provides a confidential independent [helpline](#) for whistleblowers.

<u>Public Concern at Work</u> <u>(Independent whistleblowing charity)</u>	<u>Helpline: (020) 7404 6609</u> <u>E-mail: whistle@pcaw.co.uk</u> <u>Website: www.pcaw.co.uk</u>
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25.11 Taking concerns further

If a worker has sought advice and feels it is right to raise their concerns outside the Council, people they could approach include their local Council, their local Councillor, the external auditor, the health and safety executive, a government department, a solicitor, the police, an MP or a relevant professional body or regulatory organisation. If a worker does raise their concerns outside the Council, they must do it without passing on confidential information. The Monitoring Officer can give advice on this.

25.12 Monitoring and reporting

The Chief Finance Officer will report on a quarterly basis to the audit and governance committee on the number (if any) of whistle blowing complaints made as part of the Council's anti-fraud and corruption awareness framework.

25.13 Responsibility for this policy

The Monitoring Officer has overall responsibility for this policy and how it is used and how the policy is working.

Appendix 2

5.3 Planning

(a) Description of responsibility

All the responsibilities in Paragraph A and Part 1 of paragraph I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the duty to deal with complaints about high hedges under Part 8 of the Anti-Social Behaviour Act 2003 and the power to preserve trees under the Sections 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999.

(b) Who carries out the responsibility?

The following responsibilities are carried out by area planning committees:

- deciding planning applications for more than five residential units or for residential developments on sites with a site area of over 0.25 hectares
- deciding planning applications for non-residential developments on sites over 0.5 hectares
- deciding planning applications for non-residential developments with new or increased floor space of more than 500 m²
- deciding planning applications by the Council or by Councillors or officers
- deciding planning applications where a Councillor or an officer is the agent
- agreeing significant amendments or planning conditions where those conditions were originally imposed by area planning committee
- agreeing significant amendments to approved plans subsequent to the grant of planning permission or listed building consent
- deciding planning applications that have been called in during the 21-day consultation period (see 17.3)

- deciding listed building consent applications for total or substantial demolition of listed buildings
- deciding planning applications for phone masts where there are objections (except applications that can go ahead, unless the Council refuses them within 56 days)
- to confirm Article 4 Direction where there have been objections
- confirming and revoking tree preservation orders when there are objections
- dealing with complaints about high hedges when the hedge is on the Council's land or land occupied by a Councillor or officer or when the complaint has come from a Councillor or officer.

Whether or not any of the preceding applies, applications for the prior approval of details for the extension of a dwellinghouse where the development can go ahead unless the council gives notice of the refusal of prior approval within 42 days (under condition A4 of Part 1 Class A permitted development rights) are not carried out by area planning committees and are dealt with by the head of city development.

Where a planning applications straddles area planning committee boundaries the area planning committee with the majority of the application site will determine the application.

The planning review committee decides planning applications that have been called in from an area planning committee (see 17.3).

The head of city development does everything else including deciding applications to renew a planning permission where there has been no change of circumstances.

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