

## **Committee: Full Council**

**Date: 20 November 2013**

Agenda item:

Wards: All

## **Subject: S106 agreements/undertakings – delegation to officers**

Lead officer: John Hill, Head of Public Protection & Development

Lead member: Cllr Andrew Judge, Cabinet Member for Environmental Sustainability and Regeneration.

Contact officer: Tim Catley, S.106 Monitoring Officer / Jonathan Lewis Team Leader (Development Control)

### **Recommendations:**

1. That General Purposes Committee recommends to Council that it agrees the constitutional changes outlined in the report.

### **1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 The Growth and Infrastructure Act 2013 is the Government's latest attempt to reform the planning system and to foster economic growth. A key objective of the Act is to speed up the planning process. Secondary legislation flowing from the Act includes measures to allow for applicants to secure a refund of planning fees in the event of delays in determining a planning application.
- 1.2 Against this backdrop, this report is put to Full Council as an initiative to help to improve performance, value for money and business effectiveness in the statutory duty of the Local Planning Authority to process and determine planning applications.
- 1.3 Officers are recommending to widen the scope of planning applications that can be determined under delegated powers by amending Part 3F of the Council's Constitution as set out in Appendix 2 so that certain cases where standard heads of terms of S106 agreements or undertakings are proposed need not be referred to the committee for decision.
- 1.4 Planning Applications, Standards and General Purposes Committees endorsed the recommendations at their meetings on the 10<sup>th</sup> of October, 23<sup>rd</sup> of October and 5<sup>th</sup> of November 2013 respectively. General Purposes Committee are recommending that Council agrees the constitutional changes outlined in this report.

### **2. DETAILS**

- 2.1 The scheme of delegation by Full Council and committees is set out in section 3F of the Council's Constitution. Paragraph 7.2(d) of the scheme (see Appendix 2 for the full wording) requires that planning applications for development proposals that include S106 agreements or other legal agreements must be determined by Planning Applications Committee (PAC). Full Council sanctions the various parts of the scheme of delegation and would have the ultimate authority to authorise any amendments to it.
- 2.2 Reporting planning applications to PAC is a resource intensive exercise with significant additional resource applied to cases that are referred to Committee. Since the current restrictions on S106 agreements in the scheme of management were put in place, changes to Council planning policies have come into effect that have resulted in a significant increase in the number of proposals with S.106 agreements being brought to PAC. These policies include:
- The Core Strategy Policy CS8 which was adopted in July 2011 that requires all proposals involving a new dwelling (net) to agree to pay a standard S.106 charge for affordable housing (subject to viability).
  - The Planning Obligations Supplementary Planning Document (SPD) that was adopted in August 2006 provided a framework for calculating contributions from minor development via standard formulae. Since 2009 due to the identification of the borough wide shortfall of school places/classrooms a standard education contribution charge using formulae contained in the SPD has been applied to all proposals containing additional dwellings containing two or more bedrooms.
- 2.3 The Community Infrastructure Regulations 2010 (as amended) effectively will make it unlawful for Local Planning Authorities to grant planning permission subject to a S106 agreement for funding to be pooled with other contributions for infrastructure items or projects, other than affordable housing. This restriction is due to come into effect on 1 April 2014 for Merton with the type of contributions that will no longer be lawful including (but not be limited to) sustainable transport, open space, play space, public realm and education where these monies can be pooled with other similar contributions agreed since 1 April 2010. Affordable housing and permit free obligations (a standard requirement for new dwellings in Controlled Parking Zones with insufficient off-street parking provision prohibiting holders of residential parking permits from occupying the new dwellings) are standard requirements that will continue post 1 April 2014.
- 2.4 Appendix 1 assesses PAC cases involving S106 agreements for 2012-13, 2010-11, 2009-10 and 2005-06 and demonstrates the impact of the standard charges for affordable housing and education in terms of significant additional PAC applications being brought to Committee only due to the S.106 requirement.

- 2.5 Council is being asked to agree to the constitutional changes that would delegate the decision of cases where there have been no reason for the case to be determined by Committee other than that a standard charge or standard head of term is proposed where no negotiation has resulted in a variation of the requirement (for example affordable housing or education contribution where viability has not resulted in a reduction of contribution, or permit free development requirement). It is considered the additional work associated with taking a case to PAC can be avoided, if the recommendation was implemented, on a significant number cases.
- 2.6 It might be argued that the introduction of the Merton CIL will reduce the importance of agreeing a change to the scheme of delegation because the standard education contribution charge will no longer be lawful from 1 April 2014 under CIL Regulation 123.
- 2.7 However, if the proposed changes to the scheme of delegation are not implemented there would only be a negligible drop in cases with S106 agreements requiring authorisation by PAC as applications warranting education contributions and affordable housing contributions would be unaffected.
- 2.8 There are also likely to be other benefits as follows:
- It would enable a more timely processing of applications and improved performance thereby avoiding appeals for non-determination of planning applications within the statutory period.
  - It would reduce the risk to the Council of applicants seeking refunds on undetermined applications. New statutory provisions will come into force in 1 October 2013 provide applicants with recourse to require a refund of fees paid for planning applications where those applications have not been determined within 26 weeks of a valid application being received.
  - It would help PAC to make more conclusive decisions by allowing them to scrutinise justifications for reduced contributions including where the proposed heads of terms do not fulfil the Council's policy or SPD requirements?
  - It could reduce the number of enforcement cases where developers have commenced work on the back of a PAC decision to grant permission subject to contribution figures to be determined on the basis of viability where the viability arguments are protracted post-committee.

### **3. ALTERNATIVE OPTIONS**

- 3.1 Council may choose to agree to the changes to the constitution in full.
- 3.2 Council may agree to widen the scope of planning applications that can be determined under delegated powers to include those applications requiring the completion of a S106 agreement or that are subject to a

S106 unilateral undertaking where no objections have been raised as a result of consultation irrespective of the type of obligations that are proposed with no caveats; or

- 3.3 Council may agree alternative caveats, such as limiting powers of delegation to certain types of applications or number of dwellings, or additional caveats.
- 3.4 Opting for alternative or no caveats is not recommended on the basis that members may wish to scrutinise non-standard obligations particularly where negotiations have occurred surrounding viability or site specific issues. Council should carefully consider whether any proposed additional caveats would unnecessarily limit the scope for delegation and the associated efficiency savings.
- 3.5 Council may choose not to support the proposals and fail to make the associated efficiency savings.

#### **4. CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1 Planning Applications, Standards and General Purposes Committees endorsed the recommendations at their meetings on the 10th of October, 23rd of October and 5th of November 2013 respectively. General Purposes Committee are recommending that Council agrees the constitutional changes outlined in this report.

#### **5. TIMETABLE**

- 5.1 The proposed changes would take effect on those applications with officer recommendations from the date the scheme of management is amended by virtue of a decision of Council to agree to the same. The meetings that this proposal has been taken to are as follows:
  - 10 October 2013 Planning Applications Committee
  - 23 October 2013 Standards Committee
  - 5 November 2013 General Purposes Committee
  - 20 November 2013 Full Council

#### **6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1 This report is put to Council as an initiative to help to improve performance, value for money and business effectiveness in the statutory duty of the Local Planning Authority to process and decide planning applications.
- 6.2 The recommended proposal would if implemented reduce the amount of resource and the costs associated with taking planning application cases to Planning Applications Committee.

#### **7. LEGAL AND STATUTORY IMPLICATIONS.**

7.1 Contained within the body of the report.

## **8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1 None

## **9. CRIME AND DISORDER IMPLICATIONS**

9.1 None.

## **10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1 There are no risk implications with this proposal as the types of proposals that would no longer be taken to PAC would be determined on pre-determined criteria by way of standard clauses or criteria that already do not trigger the need to take cases to PAC. Where negotiations on an individual application have changed the principle of an obligation or have resulted in the contributions being reduced then the cases would need to go to the committee.

## **11. APPENDICES**

11.1 Appendix 1 – PAC cases involving S106 agreements for 2012-13, 2010-11, 2009-10 and 2005-06

11.2 Appendix 2 – Proposed revisions to the scheme of delegation

## **12. BACKGROUND PAPERS**

12.1 The following documents have been relied upon in compiling this report but do not form part of this report.

- London Borough of Merton Constitution.
- London Borough of Merton Core Strategy (July 2011)
- London Borough of Merton Planning Obligations SPD (August 2006)
- The Community Infrastructure Regulations 2010 statutory instrument no. 948 (as amended).
- The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013

