HARINGEY COUNCIL

Agenda item:

General Purposes Committee on 19th December 2005

Report Title: **Amendments to the Scheme of Delegation to Officers relating to Planning Enforcement**

Report of: **The Head of Legal Services and Monitoring Officer**

Wards(s) affected: **All**	Report for: **Recommendation to Council**

1. Purpose

1.1 To consider amendments to the scheme of delegation to officers relating to Planning Enforcement and Prosecution Powers

2. Recommendations

2.1 That Members recommend to full Council the adoption of the amendments to the Scheme of Delegation to Officers, Part F.7 of the Constitution, as set out in the Appendix and recommended in paragraph 8.4 to this report.

Report Authorised by:

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3. Executive Summary

3.1 This report recommends amending the scheme of delegation by making specific reference to all the relevant Planning Enforcement and Prosecution powers in the schedule of statutory powers. This is a matter of precaution only. There will be no change in the substance of the delegations since these powers are already included in the scheme under the general heading of "Enforcement Action".

4. Reasons for any change in policy or for new policy development (if applicable)

4.1 Recent case law suggests that the extent of delegated powers should be clearly defined in cases where there may be especially serious consequences for persons subject to enforcement action.

5. Local Government (Access to Information) Act 1985

5.1 The following background papers were used in the preparation of this report:

The Council's Constitution

6. Background

6.1 The provisions relating to Town Planning in the Council's Scheme of Delegation to officers are set out in Part F.7 section 4 of the Constitution from pages 25 to 109 in the most recent June 2005 version. Section 4 covers the whole of Environmental Services Directorate. The provisions relating to Town Planning are mainly to be found at pages 26 to 27, where the delegated powers are described by reference to types/limits of development, and at pages 84 to 90 where they are listed section by section of the main Town Planning Statutes in the long schedule of specific statutory delegations.

6.2 The delegations relating to Planning Enforcement are at page 27 sub-paragraph (s) and encompass "all enforcement action within the Planning Sub-Committee's terms of reference". Historically, the individual sections of the Town and Country Planning Act have not been expressly set out in the schedule of specific statutory delegations.

7. Recent Case Law

7.1 In a recent case, Kirklees Borough Council – v – Brook, the High Court decided that the words "taking enforcement action" in that Council's scheme of delegation did not include power to seek an injunction to prevent a threatened breach of planning control.

7.2 The Court was influenced by the fact that an interim injunction can be a relatively "draconian" intervention into normal property rights with potentially serious consequences since non-compliance is punishable with imprisonment. The Court would, have expected such a power to be expressly stated in the scheme of delegation.

7.3 The facts in the Kirklees case were complex and the position with the scheme of delegation there is not entirely the same as the position in Haringey. Nonetheless, as a matter of precaution and for the avoidance of any possible doubt, it is recommended that all the Planning enforcement, prosecution and related powers should be expressly set out in the schedule of specific statutory delegations.

7.4 The Council has not taken any action recently which could be affected by the Kirklees case.

8. Proposed Amendments to the Scheme of Delegation

8.1 The Appendix to this report shows the specific sections of the Town and Country Planning Act 1990 dealing with enforcement or prosecution matters which are now

recommended for inclusion within the scheme as part of the schedule of specific statutory delegations. The powers to be included are shown in italics and underlined.

8.2 All of these powers are already within delegations to officers or, at least, it has long been the Council's intention that they be delegated. In accordance with the well-established practice of the Planning Applications Sub-Committee and recent changes to the Constitution, all enforcement action and prosecution activity already undertaken under delegated powers is reported regularly to Members. It is important for the effective enforcement of planning control that decisions are taken speedily by officers and that the current delegations are continued.

8.3 It is unusual for the Council to seek injunctions to enforce planning controls and only appropriate where there is clear evidence that really serious and irreversible harm is imminent, for example the threatened demolition of a listed building. In such a case the Planning and Legal Services would initiate immediate Court proceedings and it would be very important to allow immediate authorisation through delegation to senior officers as is recommended.

8.4 Some general changes to delegations to senior officers within the Planning Service are recommended to take account of actual or potential reorganisations. The reference to the former "Group Manager – Planning" should be removed and the two "Heads of Development Control" (HDC) should be so described without reference to any responsibilities for the "East" or "West" areas which may be proposed for change in due course. Members are recommended to agree these changes to have effect throughout the scheme of delegation.

9. Recommendations

9.1 That Members recommend to full Council the adoption of the amendments to the Scheme of Delegation to Officers, Part F.7 of the Constitution, as set out in the Appendix and recommended in paragraph 8.4 to this report.

10. Comments of the Director of Finance

10.1 There are no specific financial implications

11. Comments of the Head of Legal Services

11.1 The legal implications are set out in the body of the report

12. Equalities Implications

12.1 There are no specific equalities implications

13. Use of Appendices / Tables / Photographs

13.1 The Appendix sets out the recommended text changes to Section 4 of Part F.7 of the Constitution.