

Report to the Council

Report of: **Constitution Working Group
(Councillor M. McEwen)**

Date: 30 July 2018

Subject: **Planning Process Review – Delegation**

Recommending:

(1) That the words “Director of Governance” in paragraph (3) of the Working Groups Terms of Reference be replaced with the words “Monitoring Officer” as set out in Appendix 1 to this report.

(2) That the revised planning delegation (currently numbered CLD 2 in the scheme of delegation from the Council) as set out at Appendix 2 to this report be approved;

(3) That Article 10 of the Constitution (District Development Management Committee and Area Plans Sub-committees) be amended as follows (and as set out in Appendix 3 to this report):

(i) within the section on the Terms of Reference of the District Development Management Committee, the deletion of the following words in paragraph (f) of that subsection, “(and/or a spouse or partner thereof)” and the insertion of the words “(and/or their relevant person as defined in the Council’s Code of Conduct)” i;

(ii) within the section on the Terms of Reference of the Area Plans Sub-committees, deletion of paragraph (5) of that subsection and the insertion of a new paragraph (5) as follows:

“(5) Planning applications made by officers of Service Director level and above”

(iii) within the section on the Terms of Reference of the Area Plans Sub-committees the inclusion of the following additional words as a new subsection:

“(7) To request officers to undertake enforcement action on a site where members have refused a retrospective planning application; and

(8) To require a report to the relevant Plans Sub-committee from officers in those cases where no further action is subsequently proposed, such a report to give option to refer enforcement action to the District Development Management Committee; and

(9) To require such report be made within 2 months after the elapsing of the timescale within which a retrospective application can be appealed and that the sub-committee is informed if an appeal has been launched after the 6 week deadline.”;

(4) That the Monitoring Officer be asked to make the required changes to the schedule of delegations and Article 10 of the Constitution; and

(5) That the Constitution Working Group be asked to undertake a review of the impact of these changes after a year of operation.

Background

1. The Working Group have been reviewing the current arrangements for delegation of planning related matter to officers and the way in which the development management function operates in order to ensure the smooth implementation of the Local Plan.

2. We have met on four occasions since January 2018 to discuss changes that are required to the delegations in order to ensure that member's time at committees and sub-committees is put to the most effective use.

3. Our review is set against the backdrop of the need to deliver the Local Plan and the considerable resource implications for all service areas as the Council will receive a significantly increased volume of work – both at pre-application and application stage. Resources have been made available via an implementation team to accommodate this but experienced officers are at a premium.

4. It is key to such a review that we consider the need to match available staffing resources to ensure that they are being used in the most effective way, and gives the councillors the ability to ensure their oversight on sites that are of concern as they too will have greater pressures placed upon them in the wider planning role envisaged.

5. Increased member involvement will also be required over and above the determination of planning applications during the preparation of the strategic masterplans and concept frameworks and to be briefed on pre-application proposals in an open and transparent way in order to ensure that members are not caught by predetermination.

6. The reality of the delegation processes at the moment is that many of those applications decided by members do not meet the target of determination within eight weeks of receipt. Those determined by officers do. Statutory performance reporting includes those applications where we have agreed with the applicants an extension of time so that we can take longer to determine due to one of the parameters in the constitution requiring member scrutiny.

7. As part of our review, research has been undertaken on the number of applications that have been referred to committee for decision for the period November 2016-October 2017 that were recommended for approval. This revealed that of the total of 283 applications considered by members, 109 were household applications referred to committee by one of the delegation clauses.

8. Of those householder applications referred to members, only 14 applications were then refused. This represents 13% of all referred householder applications or 0.5% of the total applications that came before members in the last year. For each of these 109 applications, once representations have been received, the process to get the application to committee adds between three and six weeks to the determination timescale for applicants.

9. Our discussions with senior planning officers have revealed that each committee meeting takes between two and three days of preparation. Each of those 109 applications have required a Committee report to be written, reviewed and amended, all those that responded to the planning consultations are then written to advising of the date of the Committee giving representation details etc. This is clearly resource intensive.

Proposed changes to the Delegations

10. We are therefore proposing some adjustments to the current delegations as set out in Appendices 2 and 3. These changes will replace the current complicated schedule of officer delegations (which can be found here: <https://bit.ly/2yWNM62> Annex E) and give more clarity to those using the system.

11. We have undertaken two periods of consultations with District members and all Town and Parish Councils. A summary of the views expressed can be found here: <https://bit.ly/2tEnfFw>

12. We are proposing some changes however. In the cases where a local town or parish council has objected but that is not supported by local residents, we are recommending that these be dealt with under delegation unless the local town or parish council are prepared to come to the meeting to put their views directly to members. Any views submitted by local councils will of course still be taken into account in determining the applications.

13. We are also recommending that the automatic referral of applications based on the number of material planning objections should be standardised at five but in the rural areas (and responding to representations on this element by members and local councils), if less than five are consulted, the majority of those responding to consultation that are objecting. Local members will still have the ability to call-in applications to their respective Area Sub-committee.

14. Following discussions with the Chairmen of the Development Control Committees, we are proposing the members own applications (and those of their 'relevant person' should still be determined by the District Development Management Committee (DDMC), but that senior officers applications can be determined at the Area Plans Sub-committees.

15. We have responded to recent concern that, where members have refused a retrospective planning application, and they have the reasonable expectation that officers will seek to enforce against the breach of planning control, a further report will come back to that Subcommittee where officers have determined that no further action was considered necessary.

16. These two issues require minor adjustments to Article 10 of the Constitution as set out in Appendix 3.

17. We have noted that our Terms of Reference include the post name of Director of Governance which has been deleted from the establishment. We have suggested that this should read 'Monitoring Officer' as they are responsible for the updating of the Constitution. This change is suggested in our recommendations.

18. We recommend as set out at the commencement of this report.

CONSTITUTION WORKING GROUP

TERMS OF REFERENCE

Title: Constitution Working Group
Status: Working Group
<p>Terms of Reference:</p> <p>(1) To review any aspect of the authority's constitutional arrangements as requested by the Council;</p> <p>(2) To undertake general reviews of specific elements of the Constitution in order to ensure that the authority's constitutional arrangements complement current legislative requirements and decisions made by the Council; and</p> <p>(3) To consider any proposals of the <u>Monitoring Officer</u> for necessary revision to any element of the Constitution.</p> <p>Reporting:</p> <p>The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.</p>
Chairman: Councillor M McEwen

S. Hill (July 2018).

Appendix 1
Replacement Planning Delegations

CLD2 Replacement

Service Director – Planning

A. To determine:

- (a) All Full Planning Applications
- (b) All Householder Planning Applications
- (c) All Outline Applications and Reserved Matters Applications
- (d) All applications for Advertisement Consent,
- (e) All Applications for Listed Building Consent
- (f) All applications for Demolition in Conservation Areas
- (g) All Applications for Hazardous Substance Consent
- (h) Tree Preservation Order Consent applications where felling is proposed.
- (i) All Applications for Variation or Removal of Conditions

except the following which shall be determined by the committee or subcommittee indicated in Article 10 to the constitution:

1. Applications for residential developments consisting of 10 or more dwellings (unless approval of reserved matters only) which are recommended for approval;
2. Applications made by the Council on land and / or property in its ownership which are for disposal, in accordance with the size of application set out in Article 10 of the Constitution.
3. Applications recommended for approval where at least one of the following have been received:
 - a. At least 5 expressions of objections material to the planning merits of the proposal are received **(or where less than five have been consulted, the majority of those responding have objected)**; or
 - b. An objection is received from a local council, supported by at least one non-councillor resident, with material planning reasons; or
 - c. An objection from a Local Council, material to the planning merits of the proposal is received and confirming in writing their intention to attend and speak at the meeting where the proposal will be considered.

4. Applications which a member (**whose ward is within the Plans Subcommittee Area**) has requested be referred to committee for consideration subject to that member:
 - a. Providing a planning reason for the request; and
 - b. The request is made in writing within 4 weeks of that application's notification in the weekly list.
5. Any application by an elected member or Senior Officer (Head of Service and above) of the Council or a relevant person (see code of conduct for definition) recommended for approval;
6. Any other application which the Head of Planning considers appropriate to be determined by members.

B. To determine;

All matters, set out below, unless the **Service Director, Planning** considers it appropriate to be determined by members.

1. Planning Related Applications

- (a) Tree Preservation Order consent applications other than where felling is proposed
- (b) All notification applications
- (c) All prior approval applications.
- (d) All certificates of lawful use and development.
- (e) All applications for non-material amendments to applications.
- (f) All applications for approval of details reserved by condition.
- (g) All applications for Permission in Principle for Minor Housing Led Development and for Technical Details Consent

2. Planning and Related Procedures

- (a) Finalising the conditions or reasons for refusal, which appear on decision notices.
- (b) The preparation of legal agreements, in consultation with the ~~Head of Service, Governance and Strategy/Assistant Director Legal Services,~~ **Service Director Governance and Member Services/Solicitor to the Council,** within the terms of any relevant Committee resolution.
- (c) Determining the need for information required to make a decision on a planning application including the need for, and scoping of, an Environmental Assessment.
- (d) Deciding the charge to be made for the provision of information where the normal scale of charges is inappropriate (e.g. information requiring research and/or to be used for commercial purposes.)
- (e) Deciding what should be within the Council's Local Validation Checklist.

3. Enforcement

- (a) To determine whether any enforcement should be taken and what such action should entail.
- (b) Issuing Stop Notices, Temporary Stop Notices, Enforcement Notices, Breach of Conditions Notices, Building Preservation Notices, Listed Buildings Enforcement Notices, Planning Contravention Notices, Conservation Area Notices, Discontinuance Notices in respect of advertisements and Notices under Section 215-219 of the Town and Country Planning Act 1990 (as amended), for all breaches of planning legislation, in accordance with the Council's adopted enforcement policy.
- (c) Prosecution of the unauthorised display of advertisements, unauthorised works to a listed building, and non-compliance where enforcement action has previously been authorised.
- (d) Take appropriate enforcement action, including serving an injunction where the Head of Planning or their nominee, having regard to the evidence, considers the circumstances to require urgent action.
- (e) Investigation and prosecution of breaches of temporary market requirements
- (f) Variation of the requirements for compliance with any enforcement related notices already authorised, including altering the period required for compliance, service of further notices and withdrawal of notices.
- (g) To authorise direct action (or re-charge the cost of that action) in pursuit of a valid enforcement notice subject to budget provision being available and to local District Councillors being notified
- (h) **To report to an Area Plans Sub-committee on specific enforcement cases were requested by members.**

4. Entry onto Land

- (a) To Authorise officers and agents engaged by the Council to use the relevant powers of entry as necessary and make application to the magistrates court for a warrant authorising entry where applicable in relation to any matter set out in this Annex.

Proposed revised Article 10

ARTICLE 10**District Development Management Committee and Area Plans Sub-Committees**

The Council will establish the following Committees which shall be appointed at its annual meeting.

Membership

- (1) The following shall be the non-executive committees of the Council, consisting of the number of members set out below:

Committee or Sub-Committee	Number of Councillors	Membership
District Development Management Committee	15	15 members of the Council appointed by the Council at its Annual meeting, subject to pro rata requirements and including those members appointed as Chairman of each Area Planning Sub-Committee. Members to be appointed on the basis of aptitude, interest and planning experience
Area Plans Sub-Committee South	25 members (Max)	All District Wards in the Parishes of Buckhurst Hill, Chigwell and Loughton, subject to (3) below and quorum requirements set out in the Council rules
Area Plans Sub-Committee East	19 members	District Wards of Chipping Ongar, Greensted and Marden Ash; Epping Hemnall; Epping Lindsey and Thornwood Common; Hastingwood, Matching and Sheering Village; High Ongar; Willingale and The Rodings; Lambourne; Lower Sheering; Moreton and Fyfield; North Weald Bassett; Passingford; Shelley and Theydon Bois.
Area Plans Sub-Committee West	14 members	All District Wards in the Parish of Waltham Abbey together with the District Wards of Lower Nazeing; Broadley Common, Epping Upland and Nazeing and Roydon.

- (2) Members of the Council appointed to each Area Plans Sub-Committee shall be drawn solely from those representing wards within the area for which the Sub-Committee is responsible shown in the 'Membership' column above. Seats on each Sub-Committee shall be allocated to all Councillors representing electoral wards in the areas concerned. The requirement for the

appointment of Sub-Committees from all members of the Council shall not apply to the Area Plans Sub-Committees.

- (3) Area Plans Sub-Committee (South) shall comprise a maximum of 25 Councillors, being the total number representing wards in the area for which the Sub Committee is responsible. At the Annual Council meeting, the Council shall determine the membership of that Sub-Committee on the basis of the number of Councillors who sign a written notice stating that they wish to serve on the Sub-Committee for the ensuing year. Any Councillor who does not sign a notice shall be deemed not to be a member of the Sub-Committee for the year in question. Councillors may not retract a signed notice or seek to join the Sub-Committee by signing a notice until the next Annual Council meeting.
- (4) A member of the executive may serve on an Area Plans Sub-Committee if otherwise eligible to do so as a Councillor.

Responsibility for functions:

The Committee and Sub-Committees the subject of this Article have responsibility for determining matters which have been delegated by the Council and the Executive shown in Part 3 of this Constitution, showing those which are the responsibility of the Executive and those which are not Executive functions and any limitations on delegation.

Terms of Reference:

District Development Management Committee

- (1) To determine:
 - (a) Any development proposals which affect more than one Area Plans Sub-Committee;
 - (b) Any 'large scale' application¹ (as defined below);
 - (c) Any 'major' application² (as defined below) where the Council is the land owner;
 - (d) Any application referred by an Area Plans Sub-Committee by resolution, by a minority of members of an Area Plans Sub-Committee in accordance with the Council's Rules or where the Sub-Committee is unable to determine the application;

¹ 'Large-scale major development' means development involving any one or more of the following;

(a) The provision of dwellinghouses where (i) The number of dwellinghouses to be provided is 200 or more: or (ii) The development is to be carried out on a site having an area of 4 hectares or more where the number of dwellinghouses is not known (normally an Outline application) or
(b) The provision of a commercial building or buildings where the floor space to be created by the development is 10,000 square metres or more: or
(c) Commercial development carried out on a site having an area of 2 hectares or more.

² 'major development' means development involving any one or more of the following;

(a) The provision of dwellinghouses where (i) The number of dwellinghouses to be provided is 10 or more up to 199: or (ii) The development is to be carried out on a site having an area of 0.5 hectares or more but just less than 4 hectares where the number of dwellinghouses is not known (normally an Outline application)..
(b) The provision of a commercial building or buildings where the floor space to be created by the development is 1,000 square metres or more up to 9,999 square metres: or
(c) Commercial development carried out on a site having an area of one hectare but less than 2 hectares.

- (e) To determine any recommendation of an Area Plans Sub-Committee which relates to potential decisions liable to give rise to claims for costs or compensation, including development management matters and enforcement of planning requirements (including recommendations of no action) but excluding works on preserved trees; and
- (f) Any planning application or other planning matter submitted by, or on behalf of, a Councillor of the Authority ~~(and/or a spouse or partner thereof)-~~ **(and/or their relevant person as defined in the Council's Code of Conduct)**

Area Plans Sub-Committees

- (1) To consider all applications (except as may be delegated to the Assistant Director of Governance ~~(Development Management))-~~ **Service Director, Planning**) or fall to the District Development Management Committee to determine as set out above) received for development within the respective Sub-Committee area and, except as detailed below, to make decisions on behalf of the local planning authority thereon;
- (2) Subject to the prior approval of the Chairman of the Sub-Committee, to consider informal proposals for development and to give guidance to the Assistant Director of Governance ~~(Development Management))-~~ **Service Director, Planning**);
- (3) To consider planning applications made by other authorities which are considered by the Assistant Director of Governance ~~(Development Management))-~~ **Service Director, Planning**) to require member response;
- (4) To consider and make recommendations to the District Development Management Committee on applications for development where:
 - (a) the Sub-Committee's proposed decision is a substantial departure from:
 - (i) the Council's approved policy framework; or
 - (ii) the development or other approved plan for the area; or
 - (iii) it would be required to be referred to the Secretary of State for approval as required by current government circular or directive;
 - (b) the refusal of consent may involve the payment of compensation; or
 - (c) the District Development Management Committee have previously considered the application or type of development and has so requested; or
 - (d) the Sub-Committee wish, for any reason, to refer the application to the District Development Management Committee for decision by resolution.
- ~~(5) Applications made by officers of the Council defined in Appendix A of the Planning Services Scheme of Delegation which are required to be determined by a Sub-Committee.~~
- (5) Planning applications made by officers of Service Director level and above**

- (6) Where an application is objected to by a Councillor in a purely personal capacity.
- (7) To request officers to consider enforcement action on a site where members have refused a retrospective planning application; and**
- (8) To require a report to the relevant Plans Sub-committee from officers in those cases where no further action is subsequently proposed, such a report to give option to refer enforcement action to the District Development Management Committee; and**
- (9) To require such report be made within 2 months after the elapsing of the timescale within which a retrospective application can be appealed and that the sub-committee is informed if an appeal has been launched after the 6 week deadline**

Public Participation at District Development Management Committee and Area Plans Sub-Committees on Planning Matters

- (1) There shall be afforded to those classes of persons specified in the rules for participation at Appendix 1 to this Article an opportunity, on request, to make oral representations to any Area Plans Sub-Committee (or in appropriate circumstances, the District Development Management Committee) meeting concerning any planning application or related matter before that Sub-Committee for determination.
- (2) The procedure for dealing with requests to address an Area Plans Sub-Committee or the District Development Management Committee shall be as prescribed from time to time by the Council and as set out in Appendix 1 to this Article.

Site Visits

- (1) Formal Site visits may be undertaken of any potential development site subject to application where there is a substantial benefit to the decision-making process. Such a visit may be approved by the Sub-Committee at the meeting where they are being asked to determine the matter or in advance on the recommendation of the Assistant Director of Governance (Development Management in consultation with the Chairman of the Sub-Committee.
- (2) Formal Site visits will be undertaken following the guidance at Appendix 2 to this Article.

**RULES FOR PARTICIPATION ON PLANNING MATTERS AT COUNCIL,
AREA PLANS SUB AND DISTRICT DEVELOPMENT MANAGEMENT
COMMITTEE MEETINGS**

1. The following persons shall be able, on request, to address the appropriate Area Plans Sub-Committee and/or District Development Management Committee on any planning application or related matter within its terms of reference and included on any agenda, for a period of three minutes:
 - (a) one objector;
 - (b) one representative of any relevant Parish or Town Council for the purpose of explaining the views of that Council on the matter in question;
 - (c) one representative of any other authority consulted on the application or as a statutory consultee where they have so requested; and
 - (d) the applicant (or one nominated agent or representative);
2. In the case of planning applications which have a District-wide significance, it shall be permissible for the Chairman of an Area Plans Sub-Committee or the District Development Management Committee, to allow any Parish or Town Council to speak on such an application.
3. For the purposes of this Standing Order the definition of "planning application or any related matter" shall not include any existing or proposed enforcement action under the Planning Acts.
4. The Chairman of the Committee or Sub-Committee may allow additional speakers in exceptional circumstances.
5. Persons wishing to address the Committee or Sub-Committee are required to register with Democratic Services by 4.00 pm on the day before the meeting. The Chairman may make changes or additions to speakers after that time at their discretion.
6. Persons addressing an Area Plans Sub-Committee shall be allowed no more than three minutes to present their case. At the discretion of the Chairman, speakers may clarify matters relating to their presentation and answer questions from Sub-Committee members.
7. Written submissions and photographic or similar material will not be considered by an Area Plans Sub-Committee or District Development Management Committee. Any written submissions received after the agenda is produced will be verbally summarised and reported to the Committee.
8. The right to address the Committees is extended to both the Area Planning Sub-Committees and the District Development Management Committee (but not to Council). Having previously made representations at an Area Sub-Committee does not preclude any applicant, objector or parish/town council representative from speaking again when the matter is reconsidered.

Guidance for Members at Site Visits

Formal site visits may be requested by any planning committee. These can be requested either before a planning meeting or resolved at the meeting concerned. However, these consume resources and delay determination of an application. It is good practice to consider site visits only where there is a substantial benefit to the decision-making process, e.g. when the impact of the proposed development is difficult to visualise from prior inspection from a public place, or from the plans and the supporting material; or it is particularly contentious.

It is recognised that Councillors are subject to lobbying on specific applications. In such cases, it is essential that care is taken to maintain the Council's and its members' integrity so as to protect the credibility of the planning process.

Councillors are asked to bear in mind the following guidance when undertaking planning site visits so as to avoid the perception of pre-determination.

- Site visits should be undertaken at an agreed predetermined time and conducted in a single group with a planning officer present at all times.
- Members of the committee concerned are encouraged to attend site visits.
- The site visit is managed by the Chairman, Vice-Chairman or planning officer present. The Chairman or Vice Chairman will remind Councillors of the guidance at the beginning of each visit. Members of the committee or Sub-Committee should not enter into discussions with interested parties, such as the applicant, the agent or neighbours during the visit.
- Councillors/Planning Officers should not allow interested parties to use the site visit as an opportunity of lobbying members of the committee. It is made clear to other parties at the outset that the purpose is to gather information and to view the site only.
- Any questions from Councillors should be limited to questions of fact and directed, in the first instance, to the planning officer present and not directly to interested parties present.
- In the interests of fairness to all parties, members as a single group should consider the desirability of viewing an application site from more than one property when the site visit is arranged.
- Councillors must ensure that the application is not determined at the site visit
- Councillors should avoid acceptance of any hospitality at a site visit which could be misinterpreted by third parties.