

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION WORKING GROUP
HELD ON MONDAY, 25 JUNE 2018
IN COMMITTEE ROOM 2, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.00 - 8.05 PM**

Members Present: J Philip (Planning and Governance Portfolio Holder) (Chairman), G Chambers, S Heap, L Hughes, S Jones, S Kane (Safer, Greener & Transport Portfolio Holder), C C Pond, C P Pond, J Share-Bernia and J H Whitehouse

Other members present: S Heather and S Neville

Apologies for Absence: M McEwen, M Sartin and D Dorrell

Officers Present S Hill (Assistant Director (Governance)), N Richardson (Assistant Director (Development Management)) and V Messenger (Democratic Services Officer)

1. APPOINTMENT OF CHAIRMAN

In the absence of the Chairman and Vice-Chairman, Councillor J Philip was appointed Chairman for the duration of the meeting.

2. SUBSTITUTE MEMBERS

It was reported that Councillor G Chambers was substituting for Councillor M McEwen and Councillor S Kane was substituting for Councillor M Sartin.

3. NOTES OF PREVIOUS MEETING

RESOLVED:

That the notes of the last meeting of the Working Group held on 16 April 2018 be agreed as a correct record.

4. TERMS OF REFERENCE & WORK PROGRAMME

(a) The Terms of Reference were noted.

(b) Work Programme

(i) The Assistant Director (Governance) reported that he would be liaising with the Chairman, Councillor M McEwen, on a draft work programme for this municipal year.

(ii) Item (3) (iv) Planning Process Review 2017/18 Committee systems – the Working Group would come back and look again at the planning committee structure. It had not considered this since the meeting on 20 February 2018 (Min no 17).

(iii) The ongoing restructure of the Council to replace the old directorates would fundamentally alter the schedule of delegations, the Leader's

and those that came from Council directly. Hence the Assistant Director (Governance) would be working with the Leader to ensure the decision making processes of the Council were sound.

- (iv) The new (eight) service directors would be given as much delegation as possible in this new Council structure. More essentially, all the old job titles of the ex-staff that had gone would need to be omitted from the Constitution documents. The Assistant Director (Governance) would need to work through the Constitution and replace officers' names to reflect these changes.

It was noted accordingly that members would be required to consider these amendments to the Constitution and to make recommendations for Council accordingly.

5. CONSTITUTION - REVISIONS & AMENDMENTS

It was noted that no further revisions or amendments had been made to the Constitution since the previous meeting of the Working Group, pursuant to the authority delegated to the Assistant Director (Governance).

6. PLANNING PROCESS REVIEW 2017/18 - DELEGATIONS TO PLANNING OFFICERS

- (a) Revised new delegation schedules

The Assistant Director (Governance) explained for the new members of the Working Group that the Planning Process Review had so far been considered at its meetings in January, February and April 2018. However, as it had been agreed the first consultation with all members and local councils in April was too short, a second but longer consultation had been carried out from 2 May to 6 June 2018 with the same consultees.

Appendix 1 detailed a few amendments that had been achieved from the first consultation and a Replacement Planning Delegations document, CLD2 Replacement, was published in this agenda.

Appendix 2 detailed the comments received from the first consultation.

Appendix 3 collated members' responses; and

Appendix 4 was the local councils' responses and appendix 5 showed the current delegations.

Appendix 3: members' responses

Councillor H Brady felt that the Council was taking powers away from local councils and that members had been elected to spend more time in planning meetings if this was required so that full, householder, outline and variations of conditions planning applications should come to the Area Planning Sub-Committees.

Councillor P Stalker supported a quality control system. The bar needed to be raised in terms of the quality and relevance of objections from local councils and that the clerk should have received appropriate planning training to facilitate advice at its meetings when planning applications were being commented on. If a written objection was received from a local council that clearly had no merit in planning terms, there should be a system whereby a senior planning officer (perhaps in consultation with a non-ward member) could screen out inappropriate objections,

advise the local council of the reasons why, and thus optimise the Area Planning Sub-Committees' time.

Councillor G Chambers was strongly against reducing the planning committees, and would welcome more committee meetings for Buckhurst Hill and Chigwell. The more delegated powers taken away from residents would not be welcomed either. He was concerned over who would decide what was material to the planning merits of an application (A 3) and (A 4). He would prefer two objections for an application to come to an Area Planning Sub-Committee with an objection from a local council (A 3b). There needed to be some consideration for the remoter parts of the District. He suggested stopping outline applications (A (c)). On members' applications (A 5), from a public perception point of view, these should go to the District Development Management Committee (DDMC) as currently, or moved to another Area Planning Sub-Committee, but applications from senior officers could be determined by an Area Planning Sub-Committee.

Councillor E Webster, who had attended the informal meeting of the planning committees chairmen and vice-chairmen on 31 May 2018, had two main concerns. She would like more clarification on material planning merits, who decided them and how this was achieved, and that this appeared to be the responsibility of the Head of Planning. She recommended that members and local councils were given a comprehensive list of planning merits / material planning reasons to help understand the new arrangements.

Councillors S Heap and S Neville had enforcement concerns on retrospective applications that came before the Area Planning Sub-Committees and were refused. They wanted those committees to have the ability to:

- request officers to consider enforcement action on such sites;
- where no further enforcement action was subsequently proposed, to give that sub-committee the power to require an officer report to be made to give that committee the option to take enforcement action (i.e. the power of an Area Planning Sub-Committee to authorise action); and
- to require a report to be made to that committee, soon after the appeal period had expired or to be informed if an appeal was launched.

Replacement Planning Delegations – CLD2 Replacement

The Assistant Director (Governance) commented on the following exceptions to the proposed delegations of the new Service Director (Planning) post holder.

A 1 Applications for residential developments had been reduced from 25 to those consisting of 10 or more dwellings which were recommended for approval.

A 2 A suggestion had been received that any Council application should be determined by the relevant planning committee not just those applications for the disposal of assets. However, it was noted that a contentious Council application would come to committee because objections would most likely have been received from the public.

A 3a Members might consider less than 5 objections if they considered this was too high in rural areas.

A 3b&c Local councils were not statutory consultees in the planning process though several believed they were, but rather that the Local Planning Authority (LPA) had

chosen to consult them. An appropriate objection from a local council should be presented at the relevant planning committee, but if they chose not to then determination should go to the Service Director (Planning). Some local councils had replied that on material planning considerations, how would they know when a specific application would go to a District planning committee? These exceptions downplayed their interest and they might represent an individual who was too afraid to speak. However, in planning response terms, there was no difference between a good objection from a local council or a resident if they were material to planning considerations.

B 3 The facility for Area Planning Sub-Committees to request enforcement action on a retrospective application refused by members had been raised by Councillors S Heap and S Neville (as above). It was suggested that provision could be inserted so that the committees could ask for an officer report on cases where no further action was subsequently proposed with the option to allow a committee to authorise further enforcement action. A report within two months would allow for an appeal to be submitted, and that officers inform that committee of any such appeal. Although occasions where retrospective applications were not subsequently subject to enforcement were few in number, such an addition would require changes to be made to Article 10 of the Constitution, as well as the delegations schedules.

The informal meeting held on 31 May 2018 attended by most of the planning committee chairmen and vice-chairmen had been very productive. They had suggested that in the interests of public transparency, member applications should go to DDMC as currently and that all local councillor applications came to committee.

The Assistant Director (Development Management) said that in reply to Councillor Chambers' query about stopping outline planning applications, the LPA was officially required to accept this type of application. The Government delegation target was 95 per cent of applications received by a LPA, but the Council had only achieved 87 per cent. He continued that a lot of officers' time was spent writing committee reports and compiling presentations of plans for each application handled by the planning committees.

The Working Group considered each proposal of the Replacement Planning Delegations (Appendix 1). The following points were raised during discussions and the decision noted, as detailed below.

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.

Agreed.

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.

Councillor C C Pond asked if all Council land applications could go to the Area Planning Sub-Committees.

The Assistant Director (Governance) said that no changes were being proposed to (A 2) regarding the disposal of Council land / property. Also if the Council sold land which had the benefit of a planning consideration this would increase its value and hence revenue for the Council.

In response to Councillor G Chambers remark about a previous application on Council land for an unsightly taxi building near The Broadway, he replied the caveat was that contentious applications would still go through the planning committee process.

Agreed.

3. Applications recommended for approval where at least one of the following have been received:

- 3a. At least 5 expressions of objections material to the planning merits of the proposal were received; or

Councillor C C Pond thought it was reasonable that local councils should be expected to turn up and speak about their objections at a planning meeting. There was general consensus that receipt of at least five objections was reasonable. A member could always call-in an application.

Councillor J H Whitehouse said that councillors were there to support residents, and that this should be their primary focus, rather than losing this focus by needing to free up councillors' time to become involved in larger, masterplan sites.

Councillor J Philip (Portfolio Holder Planning and Governance) said that in rural areas of the District if the LPA was consulting fewer than 5 you might not get 5 objections. Therefore the LPA needed to consult a lower level differently. He asked if members thought everyone should be required to object, or a percentage to object?

Though some councillors were in favour of fewer objections on householder applications, other councillors thought there should be no differentiation. Both Assistant Directors were in agreement that the LPA received more

householder applications than any other type of planning application. Reducing the number that came before the planning committees was one of the reasons for this review. The Assistant Director (Development Management) said that under legislation the LPA was only required to put up a site notice. Therefore the current consultation process of writing to the neighbouring householders well exceeded its legal obligation.

Councillor S Jones suggested to members that if there were less than 5 people consulted, if a majority of them made material objections, this should suffice. There was consensus that this was the fairest approach to take.

Agreed.

- 3b. An objection was received from a local council, supported by at least one non-councillor resident, with material planning reasons; or
- 3c. An objection from a Local Council, material to the planning merits of the proposal was received and confirmed in writing their intention to attend and speak at the meeting where the proposal would be considered.

Councillor C C Pond said that if there was only one unsupported objection by residents then that local council should come to committee or withdraw its objection.

The Assistant Director (Governance) said if a local council objection was received but it was not on a material consideration, should that local council be asked to withdrawn its objection?

Councillor C C Pond asked how would the local council know it was the only objector? Planning officers should decide how this should be handled. He suggested that the officer should speak to the clerk.

The Assistant Director (Development Management) said what if the clerks were to reply that they could not give an answer until after another meeting? This scenario could cause more delays to the planning process timeframes.

Councillor C C Pond said that local councils needed to be prepared to answer this question through their clerks without undue delay.

Agreed.

- 4. Applications which a member had requested be referred to committee for consideration subject to that member:
 - 4a. Providing a planning reason for the request; and
 - 4b. The request was made in writing within 4 weeks of that application's notification in the weekly list.

Agreed.

- 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;

Councillor G Chambers supported keeping this under the DDMC for transparency. However, if members' applications went to the Area Planning Sub-Committees, then they should be handled by an Area Planning Sub-

Committee that a member did not sit on. It would also be quicker for members if their applications were dealt with by the Area Planning Sub-Committees, and they should not be penalised.

Councillor J Philip said that he would support keeping the determination of members' applications at DDMC.

Councillor S Jones also agreed, and added that the chairmen and vice-chairmen of the planning committees at the informal meeting were likewise in agreement.

Agreed.

6. Any other application which the Head of Planning considered appropriate to be determined by members.

Agreed.

B. To determine:

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

1. Planning Related Applications

- (a) Tree Preservation Order consent applications other than where felling was 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

Agreed.

2. Planning and Related Procedures

- (a) Finalising the conditions or reasons for refusal, which appeared on decision notices.
- (b) The preparation of legal agreements, in consultation with the Head of Service, Governance and Strategy/Assistant Director Legal Services, 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 was inappropriate (e.g. information requiring research and/or to be used for commercial purposes.)

(e) Deciding what should be within the Councils Local Validation Checklist.

Agreed.

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 had 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, considered 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.

The Assistant Director (Governance) said that (3b) above was for specific cases of enforcement where so requested. Both Councillors S Heap and S Neville had raised enforcement issues on retrospective applications on which committees had refused permission (see above).

Councillor S Heap added that enforcement issues needed to be straightforward to the public.

Councillor J H Whitehouse said that despite conditions being added by the planning committees to a decision, some builders did not appear to take any notice of the Decision Notice.

The Assistant Director (Development Management) said that it was a judgement call by enforcement officers if it was expedient to take enforcement action. Had harm been caused? The Enforcement Team did serve notices.

The Assistant Director (Governance) had spoken to the Principal Planning Officer (Heritage, Enforcement and Landscaping), J Godden, who had advised that in the majority of cases where permission had been refused on retrospective applications, enforcement action was taken. On Area Planning Sub-Committees being able to request enforcement action and call for a report to be made on cases where it was not expedient to take action, he said that such an application would normally be referred up to the DDMC as covered by Constitution Article 10 (District Development Management Committee and Area Plans Sub-Committees).

Councillor J Philip supported the current protocol and that these applications should continue to go to the DDMC.

Councillor C C Pond said that 215 Notices for untidy land should come to the Area Planning Sub-Committees. The Assistant Director (Governance) asked do you really want to spend time discussing untidy land issues? Councillor C C Pond replied, yes.

The Assistant Director (Development Management) advised the Working Group that the Local Enforcement Plan was due for review by the Governance Select Committee at its 2 October 2018 meeting. This issue could be dealt with then, which was agreed.

Agreed.

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.

Agreed.

Appendix 5, Current Delegations, Appendix A: Matters to be Determined by the Relevant Committee

Councillor J Philip recommended to the Working Group that it would be good to retain the option for members being able to 'call in' an application.

(h) Applications referred by a District Councillor, whose own ward must be within the remit of the relevant Area Plans Sub-Committee and who has firstly notified the relevant Ward Councillors in advance, so long as the referral has been requested in writing to Officers within 4 weeks of that applications notification in the weekly list.

However, members agreed that it was not necessary to have the words "and who has firstly notified the relevant Ward Councillors in advance".

Agreed.

The Chairman asked if the Working Group could now make a recommendation to Full Council on Delegations to Planning Officers, as part of the Planning Process Review 2017/18, at the meeting on 31 July 2018.

AGREED:

- (i) That the Assistant Director (Governance) draft a report on the Planning Process Review 2017/18 – Delegations to Officers – and to be circulate to the Working Group for comments.

- (ii) That the (final) report on the recommendations of the Working Group on the Planning Process Review 2017/18 – Delegations to Officers – be submitted to Council for ratification on 31 July 2018.
- (iii) The Assistant Director (Governance) to provide more information to enable the Working Group to consider any changes to the current committee structure for the next meeting on 27 September 2018.

7. DATE OF NEXT MEETING

It was noted that the next meeting of the Working Group would be held at 7pm on 27 September 2018.