

Report to Constitution Working Group

Date of meeting: 28 September 2017

Subject: Planning Process Review 2017/18 – Scoping and Council Referral

Officer contact for further information: S Hill (01992) 564249

Democratic Services Officer: V. Messenger (01992) 564265

Recommendations:

- (1) To consider and report to Council on the referral made in relation to membership requirements of Area Plans Sub-Committee South (minute 24(a) - Council 27 July 2017).
- (2) To consider how the wider review of the planning process should be phased and whether additional meetings will be required to complete such a review.

Background to proposals

1. The Council has referred a specific matter to the Constitution Working Group in relation to requests made outside of the annual meeting to join Area Plans Sub-Committee South. This is discussed more fully below and maybe something that the Working Group may wish to address at this meeting.

2. An officer group has been established to look at the implications for the Council in delivering the growth identified in the Draft Local Plan. This will result in an increased number of planning proposals to be considered and will lead to an increase in pre-application requests for advice and planning applications. This will have implications for both officers and members given the Council's agreed approach to masterplanning and implementation agreed at the 15 June 2017 Cabinet meeting. Members will need to be involved in masterplanning and engagement will be required at various stages in bringing forward planning proposals on the strategic and other large sites. The emerging Local Plan must:

- (i) Meet the objectively assessed housing and employment need identified (as set out in the Draft Local Plan, this is currently 11,400 homes and 10,000 jobs) over the plan period (2011-2033); and
- (ii) Provide a five-year supply of deliverable housing sites against the Plan's housing requirement with an appropriate additional buffer, ensuring that historic under-delivery since 2011, the start of the plan period, is addressed as quickly as practicably possible.

3. It is therefore timely that the current arrangements for delegation to officers, how the planning committees operate and how Councillors can operate in the pre-application environment without being seen as being predetermined with the aim of facilitating the delivery of housing and other development envisaged by the emerging local plan.

Purpose of Review

4. The purpose of the review would be:

(1) To consider and report to Council on the referral made in relation to membership requirements of Area Plans South (minute 24(a) - Council 27 July 2017).

(2) To review the councillors' arrangements for considering planning proposals through masterplanning, pre-application and planning application stages and to plan for the expected increase in volume of proposals to implement the local plan.

(3) To bring forward suggested changes to arrangements to improve the rate at which local plan sites could be assessed and determined including delegation to officers, the establishment of a Quality Review Panel (being proposed for the Garden Town); and whether to establish a Development Management Forum (to ensure community engagement) on the larger sites.

(4) To consider planning development management issues for strategic sites including those requiring master planning or pre-application discussions to accord with statutory requirements on interests by councillors and differences in arrangements in adjoining authorities.

Scope

5. It is proposed that the review would cover (not exhaustively):

- (i) Delegations for different types of application;
- (ii) Whether the Council should have distinct arrangements for strategic sites and other sites that have a local plan allocation (e.g. Quality Review Panel arrangements, Development Management Forum and masterplanning);
- (iii) What arrangements are needed to ensure that the authority can catch-up the plan period housing site allocations and then maintain a five year land supply during the remainder of the plan period;
- (iv) How objections can be resolved without the requirement to submit the application to a subcommittee;
- (iv) The nature and the number (or quality) of objections that would mean a referral to subcommittee and the other existing criteria for referral to councillors;
- (v) Whether there is another potential system for councillors considering applications that meets statutory requirements, maintains the performance in determining applications whilst ensuring that councillors are able to give sufficient time at meetings to more strategic applications including:
 - (a) Geographical/ non geographical committees;
 - (b) Pro rata and single party committees – statutory position;
 - (c) Size of committees;
 - (d) Reports by officers;
 - (e) Operation by adjoining authorities;
- (vi) The role of the District Development Management Committee and councillors in pre-application and master planning activities;
- (vii) How applications for council owned sites are considered and determined;

Relevant Documents

6. In dealing with the review, the following documents will be relevant for review:

- Council Constitution, Article 10 – Development Control
- Council's Code of Conduct
- Council scheme of delegation, Part 3, Annex E and Appendix A
- Local Government Act 1972 (as amended)
- Adjoining Council's arrangements

7. The Committee are asked to give some direction on how they would like to begin such a review, what documents they wish to see and other information they wish officers to collate.

Specific Referral from Council relating to Area Plans Sub-Committee South membership.

8. At the meeting on 27 July 2017 the Council considered the following motion

- (a) Area Plans Sub-Committee South – Membership 2017/18

Proposed by: Councillor S. Murray and Seconded by Councillor R. Brookes

"(1) That the following arrangements for the appointment of members to Area Plans Sub-Committee South set out in Article 10 (District Development Management Committee and Area Plans Sub-Committees) of the Council's Constitution be waived for the current municipal year, as a result of the decision of both members representing the Loughton Roding ward of the district at the recent Annual Council meeting, not to serve on the Sub-Committee for the year:

'(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';

(2) That, subject to (1) above, Councillor S. Murray be appointed to membership of Area Plans Sub-Committee South for the remainder of the 2017/18 municipal year".

9. The Council did not agree to the motion and referred the arrangements for the appointment of members to Area Plans Sub-Committee South set out in Article 10 (District Development Management Committee and Area Plans Sub-Committees) of the Council's Constitution to this Working Group.

10 The current wording of the Article is attached at Appendix 1 for consideration and review. Members are asked to suggest whether any changes to the article in relation to membership and if they wish to make any further recommendations to Council.

Appendix 1
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;
 - (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).

Area Plans Sub-Committees

- (1) To consider all applications (except as may be delegated to the Assistant Director of Governance (Development Management)) or fall to the District Development

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.

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);
- (3) To consider planning applications made by other authorities which are considered by the Assistant Director of Governance (Development Management) 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.
- (6) Where an application is objected to by a Councillor in a purely personal capacity.

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.

ARTICLE 10

APPENDIX 2

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.