

Report to Constitution Working Group

Date of meeting: 11 July 2024



**Epping Forest
District Council**

Subject: Restructure of Planning Committees following PAS review

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Recommendations:

- (1) That Constitution Working Group agree the following changes to Planning Committees:**
 - (a) That the number of committees be reduced to no more than two committees (titled Planning Committee A and Planning Committee B).**
 - (b) That the committees are determined on the basis of agenda management.**
 - (c) That the number of Members on each committee is no more than nine, as laid out within the suggested amendments to Article 10 of the Constitution.**
 - (d) That the Planning Committee Members and Chairmen are drawn from a pool of no more than 20 Members, as laid out within the suggested amendments to Article 10 of the Constitution.**
 - (e) That the number of Planning Committee Members be reviewed after a period of nine months (at the start of the next election year).**
 - (f) That all Members of the Planning Committee undertake mandatory planning committee training.**
 - (g) That Local Ward Members have the right to speak at Committee, however are unable to debate or vote on any planning application situated within their ward.**

- (2) That Constitution Working Group agree to the recommended amendments to the Constitution, including the changes to the scheme of delegation for planning.**

- (3) That Constitution Working Group agree to the removal of the minority reference process.**

Background:

The Growth and Infrastructure Act 2013 introduced measures in which the Department of Levelling Up, Housing & Communities (DLUHC) would measure the performance of Local Planning Authorities. One of these measures is on the 'Quality of Majors'. This measure is the percentage of the total number of decisions made by the authority on Major planning applications¹ that are subsequently overturned (allowed) at appeal.

The assessment period for this measure is two years, however the reporting period is nine months following the end of the assessment period to enable appeals to pass through the system and be decided for the majority of decisions on planning applications made during the assessment period.

Therefore, a two-year assessment period ending March 2023 was used for designation decisions

¹ Major Applications – For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m² or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

in Quarter 1 of 2024, which takes account of applications decided between April 2021 and March 2023 and a 9 month lag to December 2023 for appeals to be decided. The average percentage figure for the assessment period as a whole is used.

The maximum percentage of Major applications overturned at appeal that the Government considers acceptable is 10%. Epping Forest District Council narrowly avoided the threat of designation with 9.8% of Major decisions overturned at appeal following decisions made between April 2021 and March 2023. As a result of this, PAS reached out to the Council in order to assist in risk management in this matter.

Failure to meet the above target puts the Council at risk of designation. Where an authority is designated, applicants may apply directly to the Planning Inspectorate (on behalf of the Secretary of State) for the category of applications for which the authority has been designated. Therefore, should the Council be designated then applicants for major developments would be able to apply directly to the Planning Inspectorate for a decision. In so doing the Local Planning Authority would not receive any of the planning fees for the application, however a similar level of work would be required by the LPA in advising the Planning Inspectorate.

Therefore, designation would result in several risks, including:

- Financial risks – due to the threat of loss of major planning application fees and the resourcing required to advise the Planning Inspectorate at cost to the Council;
- Reputational risks – due to the Council underperforming and being designated; and
- Risks to resources – since the two above risks will impact on staff morale, retention and recruitment.

Examples of Local Planning Authorities that have faced designation include:

- Lewes District Council were designated in May 2024 for the quality of decision making in respect of applications for major development.
- Bristol City Council were designated in March 2024 for speed of decision-making in respect of applications for non-major development.
- Uttlesford District Council were designated in February 2022 due to failure to meet Quality of Majors KPIs.

Report:

1. The Council has a responsibility to meet the performance indicators set by DLUHC, including those on the 'Quality of Majors'. Whilst the Council is currently performing within the allowed thresholds, it only narrowly avoided the threat of designation in the review of major appeal decisions between April 2021 and March 2023.
2. Due to this, PAS have undertaken a Committee Review in order to assist in reducing this risk of designation. The review was undertaken by Cllr Linda Robinson, Worcester County Council and Wychavon District Council, and Liz Hobden and Peter Ford, Principal Consultants for PAS. The PAS team gained its evidence for the Planning Committee review from a number of different sources, including:
 - Interviewing a sample of residents' association representatives, parish and town council representatives, and local planning agents and developers.
 - Watching a sample of each of the committee webcasts.
 - Holding a workshop with officers and some Members at the council offices on 26 January 2024.
 - Undertaking a desktop study of committee minutes, officer reports, and the council's scheme of delegation and codes of conduct.
3. The review document reached a number of conclusions, and included seven

recommendations (section 3.0 – pages 3 to 5). The review concludes (section 7.0 – pages 10 and 11) that *“Although Epping Forest District Council will not need to respond to the Government concerning its performance on the quality of decision-making for Major planning applications at this stage, it came within 0.2% of having to do so and if there had been an additional Major overturn at appeal, the council would currently be under significant risk of designation. A key contributor to the quality of decision-making is the robustness of decisions made at the Planning committees. We have identified some key weaknesses in the operation of these committees through discussions with key participants in the committee process and our observations by viewing a selection of committee meetings.”*

4. PAS also make it very clear that *“To help the council move forward we strongly recommend that changes be made to the committee structures, including a review of the scheme of delegation and committee protocols. This should be supplemented with a structured programme of training for both Members and officers. PAS could support the council with this.”*
5. Whilst not a formal recommendation from PAS, there was surprise expressed at the ability of Councillors to refer planning applications from the Sub-Committees to DDMC, and from DDMC to the Council, via the Minority Reference Rule. This is not a function at other Councils as a Planning Committee is expected to determine the planning application and not refer it to another body for a decision. Therefore, it is felt that the Minority Reference Rule within the Constitution should be revised as part of this exercise, such that the only referral that can occur is if the Planning Committee pass a motion, by majority vote of the Committee, to refer the application up to the Council for determination.
6. Given the threat of special measures on the Quality of Major Application decisions, plus the Government reducing the Planning Guarantee for non-major applications from 26 to 16 weeks (fee returned if not decided by then, unless there is an extension of time agreed by the applicant), Officers presented the PAS report to Cabinet on 28 May 2024. The decision of Cabinet was as follows:
 - (1) That the Cabinet accepted the recommendations of the PAS report;
 - (2) That the Cabinet agreed to delegate authority to Lead Officers, together with the Portfolio Holder, to implement required changes, engaging with relevant Member Committees as appropriate; and
 - (3) That the Cabinet agreed to the reporting of relevant associated Planning KPIs to Overview and Scrutiny and Planning Committees for monitoring purposes.
7. Following the Cabinet decision, a workshop took place on 12 June 2024 to which all Members were invited. An officer recommendation report was circulated prior to the workshop. The workshop consisted of a presentation by Planning Services on the officer recommendations, a question-and-answer session with Liz Hobden of the PAS Team, and breakout discussions and feedback session from Members in attendance (including those who attended virtually).
8. The breakout discussions and feedback were concentrated on five questions. These, along with a summary of Members feedback, are included within Appendix 1.
9. The recommended changes to the Constitution have been amended to reflect the feedback received and the proposed changes to the Constitution are summarised within the above recommendations to this Group. Copies of the full relevant amendments can be found in Appendix 2 (amended Article 10 of the Constitution), Appendix 3 (amended Part 3 App 2 of the Constitution), Appendix 4 (amended Part 3 App 3 of the Constitution), and Appendix 5 (amended Part 5 of the Constitution).
10. Approval is being sought for the required changes, in accordance with the decision of Cabinet in May 2024 and the feedback received from the Members workshop in June 2024.