

# **Report to the Council**

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

**Date:** 30 July 2018

**Subject:** Planning Process Review – Delegation

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## **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 Plans Sub-committee, as they feel appropriate.

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**

<b>Title:</b> Constitution Working Group
<b>Status:</b> Working Group
<b>Terms of Reference:</b>  (1) To review any aspect of the authority's constitutional arrangements as requested by the Council;  (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  (3) To consider any proposals of the <u>Monitoring Officer</u> for necessary revision to any element of the Constitution.
<b>Reporting:</b>  The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.
<b>Chairman: Councillor M McEwen</b>

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 Sub-Committee 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.