

Planning and Transportation Policy Working Group Meeting	
Meeting Date	23rd November 2023
Report Title	Scheme of Delegation and Committee Procedure Rules – proposed changes
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Joanne Johnson, Head of Regeneration, Economic Development and Property and Interim Head of Planning
Lead Officer	Ceri Williams, Development Manager
Classification	Open
Recommendations	1. To recommend the proposed changes to the Scheme of Delegation and Committee Procedure Rules, as set out in Appendix 3, to the Constitution Working Group.

1 Purpose of Report and Executive Summary

- 1.1 This report sets out the rationale for proposed changes to the Scheme of Delegation and Committee Procedure Rules (parts 2.8 and 3.1 of the Constitution) in relation to Planning Committee, and seeks Planning and Transportation Policy Working Group's (PTPWG's) recommendation that these are considered by the Constitution Working Group.

2 Background

- 2.1 An initial set of proposed changes was presented to and discussed by PTPWG at its September meeting. Members requested a specific change in relation to extension requests for consultation periods, and asked for wider comments to be reflected upon, and a revised set of proposals to be brought back to the working group in November.
- 2.2 The overarching rationale of the proposed amendments is to ensure that appropriate planning applications are referred to Planning Committee for reasons of public interest, and to promote transparency and accountability..
- 2.3 Appendix 1 shows the current wording of the Council's adopted Constitution for the specific areas where amendments are proposed. Appendix 2 shows the proposed changes taken to PTPWG in September.
- 2.4 PTPWG members agreed a number of amendments to the September 2023 proposals, which are set out in grey highlight in Appendix 3.
- 2.5 Where views were mixed, these points have been further considered by officers, and their inclusion /otherwise is discussed in the table below.

Comment	Response
2.8.15.2 (b) Should the Head of Planning write to Town / Parish Councils to notify them when they do not consider their representation to be based on valid considerations, and to explain that the application will not be reported to the planning committee. Is this an effective use of officer time?	<p>The original proposed inclusion has been retained in Appendix 3.</p> <p><u>Rationale:</u> retain as this will support borough-parish relations, and parish engagement in planning.</p>
2.8.15.2 (c) Should the 'three letters' provision be retained / reinstated?	<p>The originally proposed deletion has been retained in Appendix 3.</p> <p><u>Rationale:</u> of itself, the number of representations received has no bearing on planning decisions. This removal is intended to support the role of Ward Members, who retain the ability to 'call in' applications to Committee irrespective of the number of representations.</p>
Committee Procedure Rules – proposed addition: Is the value of recorded votes outweighed by the time this requires?	<p>The original proposed inclusion has been retained in Appendix 3.</p> <p><u>Rationale:</u> the value in transparency / accountability is believed to outweigh the additional time.</p>
Committee Procedure Rules – proposed addition: Members will need to be clear what constitutes lobbying.	<p>The original proposed inclusion has been retained in Appendix 3.</p> <p><u>Rationale:</u> a definition will be included in a forthcoming Member – Developer Protocol, as will the understanding that a declaration does not mean the lobbied member is pre-determined.</p>
Committee Procedure Rules – proposed addition: Query re: the value of writing to the Head of Planning within seven days if a member votes contrary to an officer recommendation.	<p>This has deleted from Appendix 3.</p> <p><u>Rationale:</u> On balance, the value that this could bring to an appeal may be outweighed by the administration burden and risks.</p>
Committee Procedure Rules: Members suggested adding clarity around behaviour expectation of attendees in the public gallery	<p>This has not been included in Appendix 3:</p> <p><u>Rationale:</u> Part 3.1.24 of the Constitution (Council and Committee and Procedure Rules) includes the following, which therefore means clarity around public gallery behaviour is already established:</p>

	<i>If a member of the public interrupts the proceedings, the Chair will warn the person concerned. If they continue to interrupt the Chair will order their removal from the meeting room.</i>
<p>Committee Procedure Rules: additional suggestion that reference to Planning Committee’s ‘quasi-judicial’ role should be removed from 3.1.38.2.</p> <p><i>The Chair will remind those present that the meeting has a quasi-judicial role and determines the rights and obligations of the applicant.</i></p>	<p>This was included in a separate recommendation to Policy and Resources Committee on 18 October, and agreed for onward consideration:</p> <p><u>Rationale:</u> The original inclusion of the term ‘quasi-judicial’ was intended to promote understanding of the function and role of the Committee by a lay person. The High Court is however clear that planning committees are not ‘quasi-judicial’ in the strict legal sense, and this removal corrects this.</p>

- 2.6. Members are asked to note that the appropriateness of the Scheme of Delegation and Committee Procedure rules is regularly reviewed by officers, and further amendments may be proposed to PTPWG in the future.

3 Proposals

- 3.1 To recommend the proposed changes to the Scheme of Delegation and Committee Procedure Rules, as set out in Appendix 3, to the Constitution Working Group.

4 Alternative Options

- 4.1 Members may choose not to recommend some or all of the proposed amendments to the Constitution Working Group, and / or to recommend additional amendments.

5 Consultation Undertaken or Proposed

- 5.1 A first report of proposed amendments was discussed by PTPWG in September.
- 5.2 Next steps would be consideration by the Constitution Working Group, Policy and Resources Committee, and Full Council.

6 Implications

Issue	Implications
Corporate Plan	The proposals align with corporate objective 4: renewing local democracy and making the council fit for the future.

Financial, Resource and Property	The proposals are likely to have a positive impact on resources as they will focus Committee (and, accordingly officer) time on the most appropriate planning decisions.
Legal, Statutory and Procurement	The proposals would require an amendment to the Constitution, which will be progressed via the Council's Constitution Working Group.
Crime and Disorder	No implications identified
Environment and Climate/Ecological Emergency	No implications identified
Health and Wellbeing	No implications identified
Safeguarding of Children, Young People and Vulnerable Adults	No implications identified
Risk Management and Health and Safety	No implications identified
Equality and Diversity	No implications identified
Privacy and Data Protection	No implications identified

7 Appendices

None

8 Background Papers

[Planning and Transportation Policy Working Group agenda pack – 19th September 2023](#) (pp9 – 19).

[Planning and Transportation Policy Working Group minutes – 19th September 2023](#) 298

Appendix 1: The Existing Scheme of Delegation and Committee Procedure Rules: sections proposed for change – as written in the current Constitution.

2.8.15 DELEGATIONS TO THE HEAD OF PLANNING SERVICES

2.8.15.1. To determine applications, negotiate and enter into Section 106 Agreements, to agree minor variations to planning obligations, to respond to prior notifications, and to make observations on behalf of the Borough Council in accordance with the provisions of the appropriate Development Plan or other adopted Borough Council Planning Policy Guidance.

2.8.15.2. The delegated powers in paragraph 1 above shall not be exercised in the following circumstances:

- (a) Any planning applications submitted by a member of the Council or Members of staff and for Council development (whether involving Council owned land or not);
- (b) Applications where the decision of the Head of Planning would conflict with any written representation received within the specified representation period from:
 - (i) Any Member of the Borough Council;
 - (ii) A statutory consultee;
 - (iii) A Parish or Town Council;

Provided that any such representations from (ii) or (iii) above are, in the opinion of the Head of Planning, based upon relevant planning considerations.

(c) Applications where the decision of the Head of Planning would conflict with letters of representations, or petitions, from at least three separate addresses received within the specified representation period from persons or bodies (other than those set out in (a) above) provided that any such representations are, in the opinion of the Head of Planning, based upon relevant planning considerations and relevant Ward Member requests that the application should be reported to the Planning Committee; and

(d) Applications which the Head of Planning considers are sufficiently major or raise difficult questions of policy interpretation or any unusual or difficult issues which warrant Member determination.

2.8.15.9. To respond to hedgerow notifications in consultation with the appropriate ward member(s).

2.8.15.12. To authorise, sign and serve all enforcement and other notices under the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) regulations 2007 on behalf of the Council following consultation with the Planning Committee Chair or Vice-Chair and local ward Member(s).

2.8.15.18.To respond to consultations from neighbouring planning authorities including Kent County Council following consultation with the Planning Committee Chair or Vice Chair, and the relevant Ward Member(s).

Committee Procedure Rules:

3.1.38.5. The Chair will welcome any members of the public who are registered to speak on any item. They will inform the meeting that in the event that an item is deferred to a site meeting of the Planning Working Group, members of the public may speak both at this meeting and at the site meeting, but there will be no further opportunity to speak on the matter when it comes back to the Planning Committee for final determination.

Appendix 2: Changes proposed to Planning and Transportation Policy Working Group on 19th September 2023.

Proposed additions are indicated in **red type**; proposed deletions are ~~struck through~~.

The rationale for these changes can be found on pages 11 – 18 of the original Working Group [report](#).

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2.8.15.2. The delegated powers in paragraph 1 above **shall always apply in the case of householder applications and prior notifications, but otherwise** shall not be exercised in the following circumstances:

(a) Any planning applications submitted by a member or officer of the Council, for Council development (whether involving Council owned land or not) **or on Council-owned land**;

(b) Applications where the decision of the Head of Planning would conflict with **reasons set out in** any written representation received ~~within the specified representation period from~~ **during the statutory consultation period (as specified within the Town and Country Planning (Development Management Procedure) (England) Order (2015) or any superseding legislation** from:

- (iii) Any Member of the Borough Council;
- (iv) A statutory consultee;
- (iii) A Parish or Town Council **where it is clearly stated that the Parish or Town Council want the application to be reported to the Planning Committee**;

Provided that any such representations ~~from (ii) or (iii) above~~ are, in the opinion of the Head of Planning, based upon relevant ~~planning~~ considerations.

Where the Head of Planning determines that a representation from (iii) above is not based on relevant considerations, they will write to the town or parish council to notify them that the application will not be reported to the planning committee.

~~(c) Applications where the decision of the Head of Planning would conflict with letters of representations, or petitions, from at least three separate addresses received within the specified representation period from persons or bodies (other than those set out in (a) above) provided that any such representations are, in the opinion of the Head of Planning, based upon relevant planning considerations and relevant Ward Member requests that the application should be reported to the Planning Committee; and~~

(d) Applications which the Head of Planning considers **to be in the public interest** are sufficiently major or raise difficult questions of policy interpretation or any unusual or difficult issues which warrant Member determination.

~~2.8.15.9. To respond to hedgerow notifications in consultation with the appropriate ward member(s).~~

2.8.15.12. To authorise, sign and serve all enforcement and other notices under the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) regulations 2007 on behalf of the Council following **notifying** consultation with the Planning Committee Chair ~~or~~ **and** Vice-Chair and local ward Member(s).

~~2.8.15.18. To respond to consultations from neighbouring planning authorities including Kent County Council following consultation with the Planning Committee Chair or Vice Chair, and the relevant Ward Member(s).~~

Committee Procedure Rules:

3.1.38.5. The Chair will welcome any members of the public **who are present in the public gallery, and remind them that the following proceedings are a meeting in public, not a public meeting, and that they are able to observe but not contribute to the debate. The Chair will specifically welcome any members of the public** who are registered to speak on any item. ~~They will inform the meeting that in the event that an item is deferred to a site meeting of the Planning Working Group, members of the public may speak both at this meeting and at the site meeting, but there will be no further opportunity to speak on the matter when it comes back to the Planning Committee for final determination.~~

Members to be asked at the start of each Committee whether they have been lobbied by any party seeking to influence their view.

All Planning Committee votes are to be recorded votes.

Members who vote contrary to the officer's recommendation are to provide, in writing to the Head of Planning within seven days from date of Committee, their reasons for taking a contrary view.

Appendix 3: Changes proposed following PTPWG on 19th September 2023

Recommendations brought to PTPWG on 19th September are shown as at appendix 2 (additions indicated in **red type**; proposed deletions ~~struck through~~). Additional changes for specific consideration in November are highlighted **grey**.

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2.8.15.1. To determine applications, negotiate and enter into Section 106 Agreements, to agree minor variations to planning obligations, to respond to prior notifications, and to make observations on behalf of the Borough Council in accordance with the provisions of the appropriate Development Plan or other adopted Borough Council Planning Policy Guidance.

2.8.15.2. The delegated powers in paragraph 1 above **shall always apply in the case of prior notifications, and shall apply in the case of householder applications excepting section (d) below, but otherwise** shall not be exercised in the following circumstances:

(a) Any planning applications submitted by a member or officer of the Council, for Council development (whether involving Council owned land or not) **or on Council-owned land**;

(b) Applications where the decision of the Head of Planning would conflict with **reasons set out in** any written representation received ~~within the specified representation period from~~ **during the statutory consultation period (as specified within the Town and Country Planning (Development Management Procedure) (England) Order (2015) or any superseding legislation,** or within an extension of time period agreed by officers, such consent not to be unreasonably withheld or delayed, from:

(v) Any Member of the Borough Council;

(vi) A statutory consultee;

(iii) A Parish or Town Council **where it is clearly stated that the Parish or Town Council want the application to be reported to the Planning Committee**;

Provided that any such representations ~~from (ii) or (iii) above~~ are, in the **professional** opinion of the Head of Planning, based upon relevant ~~planning~~ considerations.

Where the Head of Planning determines that a representation from (iii) above is not based on relevant considerations, they will write to the town or parish council to notify them that the application will not be reported to the planning committee.

Where the Head of Planning determines that a representation from (iii) above is based on relevant considerations and the parish council has clearly stated that they want the application to be reported to the Planning Committee, the Head of Planning will write to the town or parish council to encourage them to send a speaker to the relevant Planning Committee meeting.

~~(c) Applications where the decision of the Head of Planning would conflict with letters of representations, or petitions, from at least three separate addresses received within the specified representation period from persons or bodies (other than those set out in (a) above) provided that any such representations are, in the opinion of the Head of Planning, based upon relevant planning considerations and relevant Ward Member requests that the application should be reported to the Planning Committee; and~~

(d) Applications which the Head of Planning considers **to be in the public interest**, principally (but not exclusively) those which would meet the standard triggers for Environmental Impact Assessment submission ~~are sufficiently major or raise difficult questions of policy interpretation or any unusual or difficult issues which warrant Member determination.~~

~~2.8.15.9. To respond to hedgerow notifications in consultation with the appropriate ward member(s).~~

2.8.15.12. To authorise, sign and serve all enforcement and other notices under the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) regulations 2007 on behalf of the Council following **notifying** consultation with the Planning Committee Chair ~~or~~ **and** Vice-Chair and local ward Member(s).

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Members to be asked at the start of each Committee to declare whether they have been lobbied by any party seeking to influence their view.

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Members who vote contrary to the officer's recommendation are to provide, in writing to the Head of Planning within seven days from date of Committee, their reasons for taking a contrary view.