

<b>Planning and Transportation Policy Working Group Meeting</b>	
<b>Meeting Date</b>	19 <sup>th</sup> September 2023
<b>Report Title</b>	Scheme of Delegation and Committee Procedure Rules – proposed changes
<b>EMT Lead</b>	Emma Wiggins, Director of Regeneration and Neighbourhoods
<b>Head of Service</b>	Joanne Johnson, Head of Regeneration, Economic Development and Property and Interim Head of Planning
<b>Lead Officer</b>	Ceri Williams, Development Manager
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	1. To recommend the proposed changes to the Scheme of Delegation and Committee Procedure Rules, as set out in tables 1 and 2, 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) and seeks Planning and Transportation Policy Working Group’s (PTPWG) recommendation for these to be considered by the Constitution Working Group.

## **2 Background**

- 2.1 When Swale Borough Council switched from a Cabinet system to a Committee system in May 2022, its Constitution was rewritten accordingly. The Constitution Working Group is the mechanism by which any further refinements to the Constitution are considered and approved.
- 2.2 Planning Improvement Board was established in March 2023 to support the newly-created Planning Improvement Strategy. It is attended by senior officers, the Leader and Deputy Leader, the Chair and Vice-Chair of Planning Committee and the Chair and Vice Chair of PTPWG.
- 2.3 In May 2023 Planning Improvement Board agreed to review current procedures for preparing the Planning Committee agenda to ensure effective use of time and optimal delegations. The guiding principles of the review were agreed as:
- Members play a central role in the planning decision making process, including deciding which applications should be determined by Planning Committee
  - There are legitimate planning reasons for applications to be included on the Committee agenda, and it is in the public interest for the application to be debated and determined by the Planning Committee

- The expectations of the public (both applicants and neighbours) are managed so that they know what to expect from the planning process and can be assured members and officers are accountable for their decisions.
- 2.4 This accords with government advice that it is in the public interest for the local planning authority to have effective delegation arrangements, to ensure that planning applications that raise no significant planning issues aren't delayed unnecessarily and that resources are appropriately concentrated on the applications of greatest significance to the local area.
- 2.5 In July 2023, Planning Improvement Board considered consequent proposals for amendments to the Scheme of Delegation and Committee Procedure Rules. Members agreed to recommend the amendments shown in tables 1 and 2 to PTPWG for discussion and onward recommendation to the Constitution Working Group.

**Table 1: Scheme of Delegation Proposals**

	<b>Current Committee Delegations to the Head of Planning</b>	<b>Proposal</b>	<b>Rationale</b>
1	<p>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.</p> <p>2.8.15.2 The delegated powers in paragraph 1 above shall <b>not</b> be exercised in the following circumstances:                      (a) Any planning applications submitted by a member of the Council, staff and for Council development (whether involving Council owned land or not)</p>	<p>Any planning applications submitted by a member of the Council, staff, council development <b>or on council owned land</b></p>	<p>It is important that applications that are submitted by members and staff of the Council and Council development are reported to the planning committee. At present there is no requirement for applications on Council owned land to be reported to the planning committee, however, this is considered equally important for transparency reasons</p>
2	<p>2.8.15.2 The delegated powers in paragraph 1 above shall <b>not</b> be exercised in the following circumstances:                      (b) Applications where the decision of the Head of Planning would conflict with any written representation</p>	<p>Applications where the decision of the Head of Planning would conflict with <b>reasons set out in</b> written representations <b>received during the statutory consultation period as specified within the Town and Country Planning (Development Management Procedure)</b></p>	<p>A number of amendments are proposed in relation to this section as these requirements trigger the most referrals to the planning committee. There are also opportunities to tighten and clarify wording.</p> <p>Currently requests for applications to be reported to Planning Committee must be made within the</p>

<p>received within the specified representation period from:</p> <ul style="list-style-type: none"> <li>(i) Any Member of the Borough Council</li> <li>(ii) A statutory consultee</li> <li>(iii) A Parish or Town Council</li> </ul> <p>Provided that any such representations from (ii) or (iii) above are, in the opinion of the Head of Planning, based upon relevant planning considerations</p>	<p><b>(England) Order (2015) or any superseding legislation</b> <del>written representation received within the specified representation period</del> from:</p> <ul style="list-style-type: none"> <li>(i) Any Member of the Borough Council</li> <li>(ii) A statutory consultee</li> <li>(iii) A Parish or Town Council <b>where it is clearly stated that the Parish or Town Council want the application to be reported to the Planning Committee.</b></li> </ul> <p>Provided that any such representations <del>from (ii) or (iii) above</del> are, in the opinion of the Head of Planning, based upon relevant <del>planning</del> considerations.</p>	<p>‘specified representation period’, however, this is not defined. The revision proposed makes it clear that requests for applications to be reported to the Planning Committee need to be made during the statutory timeframe for comments as defined by the Procedure Order. This will allow requests to be made during the initial 21- day consultation and any subsequent period of consultation. Having requests made early on during the application period ensures that officers can enter more meaningful negotiations early on to address these concerns where it is reasonable to do so.</p> <p>Amendments are proposed to ensure parity between the groups of potential respondents listed in terms of rationale for their representations. The reasons for this are two-fold. Firstly, there is little benefit in an application being referred to Planning Committee without rationale, as ultimately this does not focus the reason for Committee consideration, and therefore does not align with best practice.</p> <p>Secondly, when reasons are given there is an opportunity for officers to discuss the concerns of members with applicants/ agents to address those concerns and where this not possible it allows for a more focused report to be provided that fully considers the member concerns.</p> <p>Turning to Town/ Parish Councils, given the number of applications that are triggered by (iii), it is proposed that Town and Parish Councils will need to specifically request that the application be</p>
--	---	---

			reported to the planning committee. This will ensure that committee and officer time is used in the most efficient manner and that applications considered by the committee are those of greatest public interest.
3	2.8.15.2 (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	<del>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;</del>	This requirement puts the onus on the officers to inform ward members of representations received and chase up responses causing delay and increased administration. Raising concerns with ward members is an established route for members of the public. Contact details are readily available on the public website. Further to this, ward members are consulted on all application in their ward. If there are any concerns these can be raised with officers directly or at the weekly councillors' surgery. While it is proposed that this clause be removed this does not prohibit communication on matters that are causing contention locally and officers will continue to keep ward councillors abreast of such applications.
4	2.8.15.2 (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	<del>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</del>	This section has been amended to put more focus on the public interest test rather than the size and complexity of applications. The role of the planning committee is to ensure that decisions are made in the best interest of the district and this requirement reinforces this.
5	2.8.15.2 Where the Head of Planning determines that a representation from (iii) above is not based on relevant	Where the Head of Planning determines that a representation from (iii) above is not based on relevant planning considerations,	As per para. 2.8.15.2 above town and parish councils would be required to provide their comments within a specified timeframe. Where an application is called in for non-planning reasons,

	planning considerations, they will write to the town or parish council to advise them of this. The member(s) for the ward within the parish falls will also be urgently notified.	they will write to the town or parish council <b>to notify them that the application will not be reported to the planning committee</b> <del>them of this. The member(s) for the ward within the parish falls will also be urgently notified.</del>	the relevant town or parish council will be notified that the application will not be reported to the Planning Committee. If parish councils wish to engage with ward members, it is in their gift to do so.
6	2.8.15.9 To respond to hedgerow notifications in consultation with the appropriate ward member(s).	Remove	Members are sent a weekly list of applications and are consulted on applications in their ward. Should they have any particular concerns they can be raised directly with officers – there is no benefit in singling out hedgerow notifications.
7	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).	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 <del>consultation</del> <b>notifying</b> the Planning Committee Chair <del>or</del> <b>and</b> Vice-Chair and local ward Member(s).	The Head of Planning has the delegated authority to sign and serve all enforcement notices. The requirement to consult ward members raises expectations around the influence that they have in this regard. Notification ensures relevant members are apprised of key information for their area of responsibility.
8	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).	To respond to consultations from neighbouring planning authorities including Kent County Council <del>following consultation with the Planning Committee Chair or Vice Chair, and the relevant Ward Member(s).</del>	SBC is not the decision maker on such applications and as such any assessment of impact should be made at officer level based on the requirements of the local plan. Should members have particular concerns about a cross boundary development or KCC consultations they are able to discuss these concerns at officer level while bearing in mind that SBC is not the decision maker.

9	<p>2.8.15.2.</p> <p>The delegated powers in paragraph 1 above shall not be exercised in the following circumstances:</p>	<p>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:</p>	<p>19% of applications reported to committee over the six months to June 2023 were householder applications and created a large volume of work for the Planning Committee and case officers. None of the officer recommendations were overturned by Planning Committee and as such it may be beneficial for officers to be given the delegation to determine these applications so that resources can be focused on applications that best warrant consideration by Planning Committee.</p> <p>Prior notifications are recommended for removal as they are subject to strict timeframes whereby if they are not determined they are automatically approved subject to the proposal complying with the criteria set out within the Town and Country (General Permitted Development) (England) Order 2015 (as amended). As the assessment being made by officers is one of compliance, there is limited scope for debate on planning matters and referrals to the Planning Committee are not in the public interest</p>
---	--	---	---

**Committee Procedure Rules:**

10	Add	<p>Members to be asked at the start of each Committee whether they have been lobbied by any party seeking to influence their view</p>	<p>To promote transparency, accountability, and confidence in the planning system.</p>
11	Add	<p>All Planning Committee votes are to be recorded votes</p>	<p>To promote transparency, accountability, and confidence in the planning system.</p>

12	Add	<p>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.</p>	<p>To promote transparency, accountability, and confidence in the planning system. To support members and officers in the event of appeals.</p> <p>This will have the potential additional benefit of being used as a basis to determine additional training needs.</p> <p>(N.B engagement with officers on concerns pre-committee is the most beneficial way to ensure that the number of deferrals at the planning committee are reduced and puts officers in the best position to assist members with its decision-making function.)</p>
13	<p>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.</p>	<p>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 an 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</p>	<p>To ensure public expectations are set from the outset of the meeting.</p>



		when it comes back to the Planning Committee for final determination.	
14	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	3.1.38.5 The Chair will welcome any members of the public who are registered to speak on any item. <del>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.</del>	To further public engagement in the planning system.

2.6 Overall, the aim of these proposed amendments is to ensure that applications are being referred to Planning Committee for matters of public interest, and to increase transparency and accountability. This could also ensure that the length and number of items considered by Planning Committee is reduced to mitigate resource pressures. These arrangements would allow Planning Committee to focus on the most important items in the public interest.

### 3 Proposals

3.1 To recommend the proposed changes to the Scheme of Delegation and Committee Procedure Rules, as set out in tables 1 and 2, 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.

### 5 Consultation Undertaken or Proposed

5.1 The proposed amendments have been reviewed and recommended by Planning Improvement Board.

### 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, and 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	No implications identified

People and Vulnerable Adults	
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**

The current Swale Borough Council [Constitution](#).