

COUNCIL
23 November 2023

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: CONSTITUTIONAL AMENDMENT REPORT

REPORT OF: THE SERVICE DIRECTOR LEGAL AND COMMUNITY & MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR ELIZABETH DENNIS

COUNCIL PRIORITY: **People First**

1. EXECUTIVE SUMMARY

- 1.1 Further to the report in July 2023, this report covers proposed:
- changes to section 8 Planning Control Committee's Terms of Reference:
 - removal of Appendices 1-2 to Section 8, with these to be incorporated in a new Procedure document (**Appendix A**), with the aim of addressing issues that have arisen during the last year.
 - minor change to section 14 delegations for some Service Directors – regarding attestation of the Common seal.
 - Noting some minor changes to the Area Forums Terms of Reference (**Appendix B**) to include more specific language relating to Strategic Planning.

2. RECOMMENDATIONS

That Full Council:

- 2.1. Approves the proposed amendments to the Planning Control Committee's Terms of Reference as per 8.1 of this report.
- 2.2. Approves the removal of Appendices 1-2 to Section 8 of the Constitution;
- [If recommendation 2.2 approved, 2.3-2.4]*
- 2.3. Notes the proposed Procedure for Speaking at the Planning Control Committee (**Appendix A**);
- 2.4. *Agrees to the principle, that if the Procedure at 2.2 requires further amendment, that the Monitoring Officer may do so in consultation with the Chair and Vice Chair of Planning Control Committee, and the Group Leaders.*
- 2.5. Approves the amendments detailed in 8.7 regarding delegations to attest the affixing of the Council's Common seal.
- 2.6. Notes that the Area Forum Terms have been updated as per **Appendix B**, as agreed with the Leader¹.

¹ See 8.8 of this report

3. REASONS FOR RECOMMENDATIONS

- 3.1. Recommendations 2.1-2.3 are to deal with a number of situations that have arisen over the last year (or so). Recommendation 2.3-2.4 allows for greater flexibility to update a Council Procedure, rather than making this a Constitutional matter, when amendments are required. Recommendation 2.5 is for practical resource reasons for attesting/ sealing documents.
- 3.2. Recommendation 2.6 brings this to the attention of Full Council; the text amendments are to bring the definitions in line with the adopted Local Plan and accompanying procedural guidance approved by the Project Board.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. None proposed, other than, in respect of Appendices 1-2 to Section 8 of the Constitution, that these could remain a Constitutional document. However, this makes, what is a procedure for engagement, inflexible.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Chair, Vice Chair of Planning Control Committee, Executive Member for Planning (and a Group Leader), and Leader, Opposition Group Leader were consulted, on all the proposed changes prior to the Appendices A-B to this report being finalised.
- 5.2. The Leader also agreed the amendments to the Area Forums Terms of Reference at Appendix B.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

Recommendations 2.1-2.4

- 7.1 The review of arrangements, follows issues that have arisen regarding public and Member engagement / speaking at Planning Control Committee, summarised as:
 - Which Members can request Planning Control Committee to determine an application ('call-in'/ 'called-in') an application;
 - Who can then speak if they do so/ priority of those allowed to speak, if the Member has called in an application e.g., if they are a Ward Member/ are not a Ward Member;
 - Having to register to speak if you have successfully called in the application;
 - Not having a set 'protected' slot for the applicant/ agent;
 - Who can represent the community as Ward Advocate – if a Ward Member has an interest;
 - Exercising a Councillor Speaking Right if a Member has an interests/ and conflict between different Codes in the Constitution;
 - Those on Committee who have potentially predetermined the matter/ have the appearance of bias;
 - Inconsistencies in the Code of Conduct/ Planning Code and the Appendices to section 8.

Recommendation 2.5

- 7.2 Currently the position is that the Managing Director, Service Director Resources, Service Director Legal & Community, and qualified lawyers can attest (sign) a document that has been sealed.

Recommendation 2.6 Area Forums

- 7.3 Full Council approved the change of Area Committees, to Area Forums at its meeting on 18 April with effect from the new municipal year May 2023.
- 7.4 The Area Forums are informal decision-making bodies and as noted at the time of the approved changes (and as per section 9 to the Constitution), those Terms of Reference may be amended by the Leader, Executive or Officer in consultation with the Executive.

8. RELEVANT CONSIDERATIONS

Recommendations 2.1

- 8.1. The proposed change to the Planning Control Committee's Term of Reference at 8.4.5 (c)(iii) are as follows:

- (iii) within three (3) weeks of the matter appearing in the weekly lists of applications a Ward Member¹⁹ requests in writing the matter to be determined by the Committee:

- 1 detailing the reasons, which in the opinion of the Development Conservation Manager and the Chair of the Planning Control Committee are based upon one or more valid material planning considerations;
and
- 2 detailing the reasons that the matter is in the wider public interest.

Where a Ward Member makes such a request they should attend the relevant Committee meeting to present their reasons/grounds to the Committee. If they are unable to attend the relevant Committee meeting the Member must arrange for another member to present on their behalf or provide a written statement presenting their reasons/grounds, otherwise the item may be deferred.

- (d) applications submitted by the Council for its own development other than those for which no objection has been received;
- (e) the granting of orders to revoke or modify planning permissions where compensation may be payable;
- (f) the granting of certificates of alternative development;
- (g) any application made by an elected member of the Council;
- (h) any application made by an employee of the Council where applications are other than for householder development;
- (i) any application for householder²⁰ development made by an employee of the Planning and Building Control Service or Chief Officer²¹;
- (j) to receive updates on Planning Appeals lodged and Appeal Decisions made;
- (k) to receive quarterly updates on planning enforcement matters;
- (l) to consider whether to confirm tree preservation orders to which objections have been received.

¹⁹ Ward Member with an Other Registrable, or non-Registrable Interest and/or Disclosable Pecuniary Interest must not be involved in the request to refer to Committee. In a single Member Ward, another District Councilor can request referral.

²⁰ A Ward Member with an Other Registrable, or non-Registrable Interest, and/or Disclosable Pecuniary Interest must not be involved in the request to refer to Committee. In a single Member Ward, another District Councilor can request referral.

- 8.2. The proposed changes would mean:
- that a request for the Planning Control Committee to determine certain applications ('call-in') would fall to Ward Members for the particular ward in which the application was sited. If that is a *single ward*, and the Member has an interest, or sits on the and cannot therefore call-in, then another nominated Member can do so.
 - that the Development Control Manager (as opposed to Service Director) and the Chair of the Committee, determines whether a call-in is valid.
 - footnote clarifications to all relevant Councillor interests under the Code of Conduct and the ability to call-in, if such interests arise [note an alternative nominated Member may do so].

Recommendation 2.2

- 8.3. The Procedure for speaking at the Planning Committee appended at A to this report, is based upon Appendices 1-2 to section 8 to the Constitution. However it has been updated to an amalgamated version for the public and non-Members of the Committee. It is drafted on the basis that Ward Member(s) call-in; the first Ward Member does not then have to register to vote and there is a priority agreed allocation scheme for other Members to potentially do so (with the agreement of the Chair). There is a speaking slot for the applicant/ agent (if they register to speak), which provides additional protection for the Council, as currently if there are supporters, then *potentially* the applicant/ agent must seek their agreement to speak on their own application, if they are not the first to register.

- 8.4. The Procedure at Appendix A has (as stated in 5.1) been considered by relevant senior Members, and will (subject to comments from Council), be the version used for future Planning Control Committees. However, Full Council believe that some further amendments to Appendix A are required, then subject to reasoned comments, can be finalised post Council by the Monitoring Officer, in consultation with those set out under recommendation 2.4.

Recommendation 2.5

- 8.5. The proposal is to add to all Service Directors' delegations, that they can attest the Council's Common Seal under section 14 (a) of their functions (subject to following the normal authorisation procedures in place).

Recommendation 2.6

- 8.6. The amendments to the Area Forums Terms of Reference, are to bring the definitions in line with the adopted Local Plan and accompanying procedural guidance approved by the Project Board. In terms of what this means for consultation at Area Forums, Members should note that SP9 is wider than the previous Area Forums provisions under section 9.7.6, so it is possible that more will come to Area Forums for questions and comments (i.e. exceptionally, developments below 100 dwellings may be considered significant, if there are specific complexities and sensitivities and they will also come to the Area Forums).

9. LEGAL IMPLICATIONS

General

- 9.1. Full Council's terms of reference include "approving or adopting the Policy Framework". The Policy Framework includes the Constitution.
- 9.2. Section 37 Local Government Act 2000 requires the Council to have in place a Constitution and to keep that under review. The Local Government Act 2000 section 9P sets out the requirements of a local authority's Constitution, including the requirements to prepare it and keep it up to date and the requirement to make it available for public inspection.

10. FINANCIAL IMPLICATIONS

10.1 None identified in relation to the report.

11. RISK IMPLICATIONS

11.1. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.

11.2 Ensuring the Council has appropriate governance arrangements in place is an important risk mitigation measure. The Council's Constitution is a fundamental part of those governance arrangements.

12. EQUALITIES IMPLICATIONS

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Otherwise, no specific equality issues identified.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and "go local" requirements do not apply to this decision as this is not a procurement exercise or contract.

14. HUMAN RESOURCE IMPLICATIONS

14.1 None identified.

15. ENVIRONMENTAL IMPLICATIONS

15.1 None identified in respect of the specific amendments proposed.

16. APPENDICES

16.1 Appendix A – Procedure for Speaking at the Planning Control Committee

16.2 Appendix B – Area Forums Terms of Reference (showing changes approved as tracked changes).

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

17.1 Constitution see webpage <https://www.north-herts.gov.uk/council-constitution>