

COUNCIL
15 January 2025

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: CONSTITUTIONAL & GOVERNANCE REVIEW

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

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: CLLR DANIEL ALLEN

COUNCIL PRIORITY: **Thriving Communities/Accessible Services/Responsible Growth/Sustainability**

1. EXECUTIVE SUMMARY

- 1.1 This report presents a summary of the areas reviewed and any in principle recommendations of the Constitutional & Governance Working Group ('Working Group') in relation to the following:
- *The Planning Control Committee meetings and Sub-Committees (including start times/potential end times).*
 - *Standards Committee – recommendation to review the Terms of Reference to include other meaningful areas of remit.*
 - *Council Procedure Rules to be reviewed and amended in respect of Member Motions and Questions, (including agenda management, number, length of time on debate/remit/ and Member speeches).*

The report also covers areas considered but not recommended for change at this stage.

[Members should note that further recommendations may need to be considered on the same or similar areas, post the LGA Corporate Peer Challenge Review Report, within 6 months of this report and for that reason this should not require a motion under Council Procedure Rule 14.8.15(b)].

To note, that since the original version of this report was published for the meeting of 28 November, and then 9 December, a request for a further amendment and possible referral are covered by recommendations 2.9 and 2.10.

2. RECOMMENDATIONS

That Full Council approves:

- 2.1. *The removal of the Planning Control Committee Sub-Committee meetings from the 2025 calendar.*
- 2.2. *That Planning Control Committee meetings commence at 7pm, from:*
2.2.1 January 2025; (or if the vote on this is lost)
2.2.2 May 2025.

2.3. A Planning Control Committee Council Procedure Rule, that any item under the consideration of the Committee, at 10.30 pm, will be the concluding item of the meeting, with any remaining business to be considered at the next available meeting. Such amendment to take effect from:

2.3.1 January 2025; **(or if the vote on this is lost)**

2.3.2 May 2025.

[Note this is not a guillotine provision to end the meeting at 10.30pm]

2.4. The Standards Committee's Terms of Reference be amended to include remit to consider and adopt, or recommend adoption to the relevant decision-making body of relevant Ethical Standards Codes, or Protocols; and undertake any annual review of sections 1-18 of the Constitution (with the Monitoring Officer), prior to recommended change to Full Council.

2.5. The proposed amendments to the Council Procedure Rules ('CPR') on Member Motions, Member Questions and Rules of Debate, as follows:

2.5.1. CPR 4.8.2 (f) and (g) order of business be move to the end of the meeting.

2.5.2. CPR 4.8.12 (a) Motions on Notice – to be amended to one Motion per Political Group, to be accepted in the order that they are received.

2.5.3. CPR 4.8.12 (c) Motions on Notice – Scope, to be amended to areas the Council has responsibility for and are relevant to, or specifically affect the District.

2.5.4. CPR 4.8.12 (d) Motions on Notice - Debate to be up to 15 minutes per Motion, **[and if recommendation 2.5.2 is lost, the maximum time for all Motions in total, one hour – guillotine for Members Motion].**

2.5.5. CPR 4.8.12 – Motions on Notice – order of Motions shall be debated in rotation commencing with the largest opposition group, followed by the remaining opposition groups in descending order of group size and the administration group ending the round **[and in the event recommendation 2.5.2 is lost, this order would be repeated until any time expired – as under 2.5.4/ or if 2.5.4 lost until all Motions have been considered].**

2.5.6 CPR 4.8.14 (e) Content and Length of Speeches – to be reduced per Councillor to three minutes.

2.6. The delegation to the Monitoring Officer to finalise any amendments relating to recommendations 2.3-2.5, as approved, in consultation with the Constitutional & Governance Working Group, and thereafter to be reported to Councillors via the Member Information Service.

2.7. The increase of the Non-Executive Delegated Decision financial/ contractual threshold reporting limit to £75K (from £50K), and instructs the Service Director Resources and Monitoring Officer to make the necessary amendments to the Contract Procedure Rules and Financial Regulations (and relevant Guidance documentation) accordingly¹.

¹ NB Individual Executive Decisions are prescribed decisions and all require a Delegated Decision.

- 2.8 *(as the non-Decision-making body by vote of assent), that the Leader will exercise his Executive function, to change the names of the following Community Forums:*
- 2.8.1 *Baldock and District – to become Baldock and Villages Community Forum;*
- 2.8.2 *Royston and District – to become Royston and Villages Community Forum.*
- 2.9 *To amend section 14.6.11(b)(iv)A as detailed in paragraph 8.*
- 2.10 *To consider any recommendations from Cabinet (if made) from 14 January 2025, on the amendment to 14.6.5 (a)(xiii) and 14.6.13.*

3. REASONS FOR RECOMMENDATIONS

- 3.1. To ensure the arrangements are up-to date and fit for purpose.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. A number of issues were considered by the Working Group, and not taken forward. These are detailed below. The recommendations put forward by the Councillors on the Working Group, are those that they were predisposed towards, and considered worth Full Council debate and determination.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. In the 2023/24 municipal year, it was indicated that the Constitutional & Governance review would be undertaken, post all-out elections. The Council approved the principle of establishment of a Member (Group Leaders/ nominated Sub) Officer (Managing Director, Service Director Resources/ section 151, Monitoring Officer, Democratic Services Manager and Committee, Member and Scrutiny Manager), Working Group, in its calendar of meetings in May 2024. The purpose was to review the Constitutional and decision-making arrangements, such work, and recommendations to be made during 2024. The Working Group has met twice (August and October) to consider the matters detailed in this report and has made the recommendations - based on those that the Members within the Group, considered should be taken forward for formal consideration.
- 5.2. There was consultation in April 2024 with the then Chairs/ Vice Chairs of the Community Forums. Their feedback was considered by the Working Group.
- 5.3. There has been consultation with the Members of the Planning Control Committee by the Chair of that Committee, on how to improve its effectiveness. Following this, further District Councillor consultations on the Planning Control Committee/ Sub-Committees review options were undertaken (whether to have Sub-Committees, timing of meetings and any 'guillotine' cut off for meeting items). These consultations were considered and form the basis for recommendations (although are included for information purposes as Appendices A-B).

- 5.4. The Members, Reserve Members, Co-optees, Independent Person and Reserve Independent Persons of the Standards and Finance, Audit and Risk ('FAR') Committees were also consulted on potential changes and / or merge of the Standards Committee with an Audit-type Committee, such as FAR. The potential review of arrangements was also discussed at the Standards Committee on 23 October and a recommendation made at that meeting to the Working Group. The consultation response is Appendix C and the recommendation repeated in this report.

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

- 7.1 The Working Group considered several issues during its two meetings, which are summarised as follows (with some additional background on key themes starting at 7.2):

7.1.1. **PLANNING CONTROL COMMITTEE:** the length, timing and arrangements for the meetings were considered in the light of current issues and previous Corporate Peer recommendations. ***Further background below under 7.2.***

7.1.2. **FINANCE, AUDIT & RISK COMMITTEE: PREVIOUS LOCAL GOVERNMENT ASSOCIATION (LGA) PEER REVIEWS:** should the scrutiny/ review of Financial reports be dealt with by Overview & Scrutiny, rather than FAR, or a separate scrutiny committee. ***Further background below under 7.5.***

7.1.3. **STANDARDS COMMITTEE:** should this be combined with another Committee, or the Terms of Reference be reviewed, or status quo. ***Further background below under 7.11.***

7.1.4. **CABINET PANEL ON THE ENVIRONMENT:** was it as effective as it could be, could it be improved, or should it be removed. *The discussion confirmed retaining and improving the arrangements.*

7.1.5. **DELEGATED DECISION – FINANCIAL LIMITS FOR NON-EXECUTIVE DECISIONS –** ***further background information below under 7.18.***

7.1.6. **MEMBER MOTIONS / QUESTIONS –** the order of business in the meetings, remit, timing, number was considered. There were also discussions on the length of the speaking time for Members. and how to ensure that the Council better manages and has a more effective meeting agenda. ***This is covered by sub-numbered recommendations under 2.5.***

7.1.7. **COMMUNITY FORUMS –** the Working Group considered the April 2024 Chair and Vice Chair feedback consultation and the possibility of making these Forums more effective. There were discussions concerning a central District Panel Grant allocation approach as well as considering the renaming of two of the Forums. *The discussions confirmed that there would be no District Panel Grant approach recommendation. Renaming two of the Forums has been covered in recommendation 2.8.*

7.1.8. *Whether any further Constitutional & Governance changes may be required, after the Corporate Peer Review 2024. There is no recommendation at this juncture– as this would be covered by any subsequent action plan, following the Peer Report.*

PLANNING CONTROL COMMITTEE:

7.2 The effectiveness of this Committee/ workloads and decision making has long been an issue and the subject of a previous LGA Corporate Peer Challenge review (2020). This continues to be a concern with some recent meetings finishing very late in the evening/ or in the early hours. It was recommended in 2020 by the LGA Peers that the Council should plan and be ready for the future increased planning applications (post Local Plan adoption), and that it:

“Consider starting meetings earlier. Members and officers are not performing at their best at late night meetings after a full day’s work and there is an increased risk of challenge from applicants if it was perceived that an application had been rushed because of a long meeting.”

“The finish time of planning committees should also be reviewed.”

7.3 The Membership at the time did not agree with earlier meetings nor guillotine provisions. Current Membership survey responses relating to the Planning Control Committee are appended at A and B. The Comments of the Chair relating to the former were also considered by the Working Group, who advised, amongst other issues, that there was scope for earlier Committee meetings, however, a further survey was advisable (*which was undertaken*). Additional Planning Control Committee Members comments are included in Appendix B. The survey responses indicated a greater willingness to consider slightly earlier meetings, and a ‘cut-off’ guillotine provision, together with better informal management of the agendas, and public speaking arrangements. ***Recommendations 2.2-2.3 cover these issues.***

7.4 The Group Leader/ Subs on the Working Group did not support the use of Planning Sub-Committee to consider Masterplans or Design Codes, therefore ***Recommendation 2.1 has been made to remove the current meetings listed from January 2025.***

FINANCE, AUDIT & RISK COMMITTEE:

7.5 In 2020 the LGA Corporate Peer Challenge undertook a review, the review report and Action Plan were considered and agreed through Cabinet on 24 March 2020 and 23 June 2020, respectively.

7.6 A follow up review was undertaken by (a different) LGA Corporate Peers during 2022 and a further LGA Peer report was issued in January 2023 (*see Appendix A to that 2022 report*). This concentrated on Overview & Scrutiny, and Finance, Audit and Risk (‘FAR’) Committees and several further recommendations were made. These were separated out into the Action Plan with responses and proposed actions for the Committees consideration and recommendations to Cabinet. This was then considered by Overview & Scrutiny and FAR in June 2023. Initial Action plan link ([CLICK HERE](#)).

7.7 Two recommendations related to the current FAR Committee's remit:

“Split finance scrutiny from audit and risk. The scrutiny of finance should sit with a scrutiny committee rather than in the audit and risk committee.”

“After the audit and risk function had been split from the finance (scrutiny) role, the new audit committee should focus on understanding their audit role and undertake a self-assessment of the role of an effective audit committee.”

7.8 As part of the Action Plan put forward (to listed recommendations nos' 24 and 25, see link in 7.6 above) was to:

“The reasons behind the recommendation are understood but considered premature. Given the various recommendations that need to be implemented in respect of Overview and Scrutiny Committee it is perhaps not the best time to be giving the committee additional work. Equally the introduction of an independent member and the various recommendations that need to be implemented in respect of Finance, Audit and Risk Committee, should improve, and enhance that Committee. This recommendation will therefore be revisited in 18 months as part of a wider review of structures post 2024 election.”

7.9 The role of an 'Audit' Committee is to carry out a set statutory function, to audit and seek assurance for certain Council's financial reporting, internal controls, governance, and risk management functions. As CIPFA has set out:

“Local government bodies are expected to meet high standards of governance and accountability. An audit committee provides a specialist forum to support and monitor the authority in the areas of governance, risk management, external audit, internal audit, financial reporting, and other related areas. There are a number of statutory duties, regulations, and standards relating to financial reporting, governance, and audit that the authority must comply with, and an audit committee is best placed to oversee these.”

7.10 Whilst this was considered by the Working Group (as per the Action Plan response), given the subsequent LGA Corporate Peer Challenge was arranged and ongoing at the time of *this* report, there is no Working Group recommendation on this issue. *However, there was an ongoing LGA Corporate Peer Challenge at the time of preparing this report; it has been mooted that a similar recommendation is likely to be made (expected in February 2025). This will be for a later Council meeting once an action plan response is agreed. There is also a potential SIAS review regarding the effectiveness of FAR, which will be reported through the Committee process in due course, which will require consideration prior to any changes.*

STANDARDS COMMITTEE:

7.11 There is no legal requirement to have such a Committee, however, this Council chose to continue with one following changes to the regime in or around 2011. Furthermore, a principal Council must have 'arrangements' in place to consider complaints against Councillors (in North Herts case, District and Local Parish, Town, and Community Councillors within the District), as per the requirements under the Localism Act 2011.

- 7.12 The current Committee has remit to consider ethical standards matters, promote those, review the Councillor Complaints Handling Procedure and complaints, consider appeals against the Monitoring Officer's refusal to grant a dispensation, consider any political restriction (as relevant) and, most significantly if it arises, Councillor complaints via a Sub-Committee. The membership is 12 District Councillors, up to 4 Co-opted Parish Councillors and the Independent and Reserve Independent Persons are invited to attend the meetings (they are not members of the Committee).
- 7.13 The Committee generally meets twice a year. However, the agendas are limited, often to the Standards Matters report (which includes complaints received/ general ethical standards issues), and one other report covering e.g., a Code or Complaints Handling Procedure Review. Locally most within Hertfordshire have retained a Standards Committee, although not all appear to have scheduled meetings. This is largely reflective of the national picture, albeit that some councils have incorporated the statutory ambit of the Standards Committee within an Audit Committee that deals with audit / financial monitoring / assurances.
- 7.14 To gauge views, an email with survey was therefore sent to the 34 Standards Committee and Finance, Audit & Risk Committee Members (and any reserves), co-optees and Independent and Reserve Independent Persons to seek their thoughts on potential changes. 8 responses were received: 4 District Councillors (full Members of the Standards Committee), one of the Parish Co-optee and the Independent Person and, the then, Reserve Independent Persons responded. None were received from FAR Committee, their reserves, or their Independent Member.
- 7.15 The survey responses relating to Standards Committee merge is appended at C. The Standards Committee considered and debated the matter on 23 October. They were not in favour of a merge with another Committee. They recommended (item 6) that:
- “(3) That the Committee recommended that the working party be urged to retain and strengthen this Committee in consultation with the recommendations and comments from the Independent Person.”***
- 7.16 The Working Group considered and accepted this principle. ***It is reflected in recommendation 2.4.***
- 7.17 *As an additional point, it is worth noting that post the Standards Committee meeting on 23 October, the Deputy Prime Minister indicated that there will be a review of the local government standards framework – with proposals to allow for suspension of members who have breached their Code of Conduct. That is likely to mean that the current Terms of Reference for the Standards Committee would have to be reviewed in due course, in any event, if such changes are enacted.*

DELEGATED DECISION – FINANCIAL LIMITS FOR NON-EXECUTIVE DECISIONS:

7.18 Members and Officers may have a general delegation or be given a specific one to come to a decision. Some of those general and specific decisions will be Executive in nature or Non-Executive. In terms of Executive decisions, these can be taken by both a Member of the Executive/ the Leader, or by an Officer. All Executive decisions are subject to Delegated Decision reporting requirements under relevant legislation 2012² (irrespective of financial level). Regarding *individual* Non-Executive decisions, these can only be taken by Officers; Regulations were introduced in 2014³ that placed requirements to produce a written record for Non-Executive Decisions, and for financial matters these relate to award a contract or when the Council will incur expenditure which, in either case, materially affects the Council's financial position. 'Materially affects' is not defined in legislation – it is something for local determination and the current limit was set in 2015 of £50K. ***This has been covered in recommendation 2.7.***

RECOMMENDATION 2.9

7.19 A request for this amendment was made by the Service Director: Regulatory.

RECOMMENDATION 2.10

7.20 Cabinet will be considering a report relating to a Local Government Ombudsman report on 14 January 2025. This amendment will only be considered if such a recommendation is made to Full Council.

8. RELEVANT CONSIDERATIONS

PLANNING CONTROL COMMITTEE:

8.1. For the reasons set out in the report (including earlier LGA Corporate Peer Challenge proposals and current workload), some amendments to arrangements are recommended. The survey results are supportive of an earlier commencement of meetings and a form of guillotine (stop) provision. The latter proposed is not a 'hard' stop, but one that allows some flexibility to conclude a matter that is under consideration at 10.30pm (as the last item of business, although the meeting may continue beyond that time). The timing of 10.30pm should also ensure that, if items then need to be carried forward to a later meeting, the number of items are likely to be limited in number. Agenda management will also be key to this and ensuring that those items with higher public interest are dealt with earlier on in the meeting where possible. The Working Group also felt that improvements could be made to the *reasonably new* Public Speaking Scheme to assist with the timing of each item, and this can be amended by the Monitoring Officer in consultation with the Chair/ Vice Chair of Committee and Group Leaders.

STANDARDS COMMITTEE, FINANCE, AUDIT & RISK COMMITTEE, PANELS & FORUMS

8.2. Nothing further to add.

² Regulation 13 2012 No. 2089

³ 2014 No. 2095 The Openness of Local Government Bodies Regulations 2014

MEMBER MOTIONS / QUESTIONS/ DEBATE

- 8.3. Member Motions and Questions were historically dealt with at the end of Full Council meetings, and were changed in the last few years to earlier on in the agenda/ the meetings. That has resulted in the 'main' decision making items not being considered until later in the evening (9/9.30pm or e.g. at the last meeting 10.30pm).
- 8.4. Currently the wide scope of any Motion has also meant, in recent times that more generic Motions are presented to Full Council, that the Council has no direct responsibility for, nor power to do more than debate and write to relevant Ministers/ parties. As many of the other Reports and referral items that are presented to Council concern important local decision making issues, it was considered appropriate to review the order of business for Member Motions and Questions, the number and timing spent on the debate. The recommendations under 2.5 reflect pertinent proposals for change.

DELEGATED DECISION – FINANCIAL LIMITS FOR NON-EXECUTIVE DECISIONS

- 8.5. The level of Decisions that “materially affects the Council’s financial position” was set at North Herts Council at/ or above £50k, in 2015. It is therefore suggested that this be increased as per recommendation 2.7. with consequential amendments to relevant Procedure Rules, Regulations and Guidance.

AMENDMENT TO SECTION 14.6.11(b)(iv) A – SERVICE DIRECTOR: REGULATORY

- 8.6. The Council has responsibilities under the Environment Act 2021 and Biodiversity Duty. This includes securing and / or facilitating Biodiversity Net Gain (BNG). There are two ways in which BNG may be secured through a s106 legal agreement:
- 8.6.1 In association a planning application for development where significant-on site habitat is to be provided to satisfy BNG requirements, so this would follow the ‘normal’ application process; or
- 8.6.2 through a ‘Habitat Bank’ where units are provided for sale by a provider to developers who cannot (fully) meet BNG requirements on their own site.
- 8.7 Where 8.6.2 occurs, the preference is for North Herts Council planning applications to utilise local Habitat Banks. BNG Habitat Banks generally do not require planning permission as they fall within permitted development rights relating to the management of land (i.e. they will involve the growing of grassland, planting of trees or other habitat creation on agricultural or otherwise undeveloped land). Such matters are a LPA function that normally falls to the relevant Service Director. It is therefore proposed that this can be covered by the following amendment to the above delegation under 14.6.11(b)(iv) A:

“all functions of the Local Planning Authority primarily Planning Policy and Development Control (including enforcement functions, authorising expenditure of planning obligation monies, Biodiversity Net Gain, ~~and~~ Environmental Impact Assessment functions, and Tree Preservation Orders), other than matters reserved to the Planning Control Committee”

- 8.8 The above amendment should ensure that this issue is covered.

9. LEGAL IMPLICATIONS

- 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.
- 9.3. In respect of recommendation 2.3, there is a possible risk of increased appeals for non-determination of an application, should the application be considered outside of the statutory or agreed time limit. The statutory time limits for applications for planning permission are set out in article 34 of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended). They are 13 weeks for applications for major development, 10 weeks for applications for technical details consent, and (from 1 August 2021) applications for public service infrastructure development, and 8 weeks for all other types of development (unless an application is subject to an Environmental Impact Assessment, in which case a 16 week limit applies). Where a planning application takes longer than the statutory period to decide, and an extended period has not been agreed with the applicant, the policy is that the decision should be made within 26 weeks for major applications and 16 weeks for non-major applications (as defined by article 34(2)(b) of the Development Management Procedure Order 2015) to comply with the 'planning guarantee'. Failure to meet these timeframes leads to a refund of the applications fees. The Development Control Manager will seek to manage the risks through advanced planning of the agenda, although additional meetings may be required.
- 9.4. In respect of recommendation 2.7, it should be reiterated that all Executive Decisions made by individuals must be recorded, include prescribed information and made available for inspection under the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. Therefore no financial exemptions for financial decisions apply. All should be recorded and unless they include exempt information, reported in the normal manner (MIS/ on the Council's Delegated Decision page).
- 9.5. The Council, as the Local Planning Authority, has a general duty to conserve and enhance biodiversity under the Environment Act 2021, otherwise known as the 'biodiversity duty'.
- 9.6. Otherwise, the legislation is as stated above.

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, albeit additional impacts may be identified with the requirement for any additional meetings or Committees. There are some positive staff and Member wellbeing issues regarding any changes to the lateness of meetings. This could, however, be offset if more meetings are required.

15. ENVIRONMENTAL IMPLICATIONS

15.1 None identified in respect of the specific amendments proposed.

16. APPENDICES

16.1 Appendix A – Survey of Planning Control Committee Members by Chair of the Planning Control Committee;

16.2 Appendix B – Survey of all District Councillors on Planning Control Committee Arrangements.

16.3 Appendix C – Standards Committee Survey Comments.

17. CONTACT OFFICERS

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Consultees:

17.2. Anthony Roche, Managing Director.

17.3. Ian Couper, Service Director Resources.

17.4. Melanie Stimpson, Democratic Services Manager.

17.5. James Lovegrove, Committee, Member and Scrutiny Manager.

17.6. Reuben Ayavoo, Policy & Communities Manager

18. BACKGROUND PAPERS

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