Proposed changes to the Constitution (Planning Scheme of Delegation) as recommended by the Constitution Review Working Party

This report makes the following recommendations to the final decision-maker:

1. That, in order to ensure the Constitution is up-to-date and provides for good decision-making, the following amendments to the Constitution be approved:

   (a) ‘Notifications’ - amend paragraphs 8.1 and 8.5 of Section 8 of Table 3 to Part 3 of the Constitution, as set out in paragraphs 2.11 and 2.12 below; and

   (b) ‘Non-residential threshold’ - amend paragraph 8.3 of Section 8 of Table 3 to Part 3, as set out in paragraph 2.15 below.

This report relates to the following Five Year Plan Key Objectives:

- A Confident Borough ensuring that “Notifications” are determined within legislative time limits (otherwise they have deemed consent) and by ensuring that robust decision making processes for major non-residential planning applications are in place such that all relevant matters are properly and thoroughly considered.

Timetable

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Date</th>
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<tr>
<td>Audit and Governance Committee</td>
<td>20 September 2016</td>
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<tr>
<td>Council</td>
<td>12 October 2016</td>
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</tbody>
</table>
Proposed changes to the Constitution (Planning Scheme of Delegation) as recommended by the Constitution Review Working Party

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 Under the Tunbridge Wells Borough Council Constitution, the Audit and Governance Committee is responsible for “oversight of the effectiveness of the Constitution and making appropriate recommendations for change”. The Constitution Review Working Party (“the CRWP”) meets regularly to review the Constitution.

1.2 The CRWP reviewed elements of the Constitution at their meeting on 11 August 2016 at the request of officers and supports the recommended changes set out in this report.

1.3 At their meeting on 20 September 2016, the Audit and Governance Committee agreed all of the amendments to the Constitution set out in this report and recommended them to the Full Council for approval.

1.4 The Council has a statutory duty to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness.

2. INTRODUCTION AND BACKGROUND

Resolution of Full Council Meeting (20 April 2016)

2.1 At the Full Council Meeting on 20 April 2016, Agenda Item 9 proposed a number of amendments to the Planning Scheme of Delegation (Section 8 of Table 3 to Part 3) set out in the Constitution. The resolution of Full Council was to refer these back to the CRWP for further consideration and recommendation to the Audit and Governance Committee, and subsequently, to the Full Council.

2.2 The proposed changes in Agenda Item 9 included:

- the removal of superfluous wording in relation to the general delegations to all Chief Officers;
- an adjustment to the executive functions delegated to the Director of Planning and Development to ensure that all relevant functions are covered;
- clarification and correction of terminology in relation to those applications to be automatically referred to Committee when recommended for approval;
- the renumbering of six paragraphs within Section 8 of Table 3 to Part 3 of the Constitution so that it is clearer, with consequent re-numbering of subsequent paragraphs;
- a minor adjustment to the wording to require that all enforcement notices and requisitions for information be jointly authorised by both the Head of Planning and the Head of Legal Partnership/Monitoring Officer (which reflects current practice);
- an adjustment to the sections listing the relevant legislation to ensure that this reflects current and relevant Acts.

2.3 These could all be dealt with under the Monitoring Officer’s delegated powers as and when required. In retrospect, these proposed changes probably should not have been included in the original report to CRWP on 18 June 2015 (prior to Audit and Governance Committee on 29 March 2016 and Full Council on 20 April 2016) because the sheer volume of changes made the item unnecessarily complex. As and when the changes are made to the Constitution under the Monitoring Officer’s delegated powers, these will be reported to CRWP.

2.4 The only substantive changes to the Planning Scheme of Delegation proposed at the Full Council meeting were in relation to the two items below, which were put to the CRWP on 11 August 2016.

2.5 Two amendments were also proposed by Cllr Stewart at the Full Council meeting on 20 April 2016. Officers have discussed these with Cllr Stewart, and the results of these discussions will be reported back to CRWP at its next meeting.

Background to change 1

2.6 This proposed change relates to one of the exceptions under which matters are not delegated to the Head of Planning for decision. Specifically, this is where any member of the Council requests that an application be determined by the Planning Committee and states the material planning grounds for doing so, and the reason why that application warrants determination at the Committee, i.e. a “call-in”.

2.7 The current wording of the Constitution enables members to make such a “call-in” request for applications and notifications. Due to the limited legislative timescale for determination and the default “approval” if they are not determined within these timescales (please see below), it is recommended that the ability to call in notifications is removed from the Constitution.

2.8 “Notifications” are not planning applications. Some works can be carried out under permitted development (i.e. do not require planning permission) without the need for any application/notification to the Local Planning Authority (LPA). Other works and changes of use of buildings can be carried out under permitted development, subject to submission of a “notification”. The scope of matters which can be assessed under a notification is very limited. The procedure for assessment of notifications is time limited, with the default position being that if no decision is made by the due date approval is automatically granted. The time limits vary between notifications; the longest is 56 days.

2.9 There is no legislative requirement to notify parish/town councils of notifications, but they are included on the “weekly list” published by TWBC. TWBC
determined approximately 100 notifications in 2015/16 (as compared to approximately 1,650 applications for planning permission and listed building consent).

2.10 National legislation requires that there are certain planning applications which substantially depart from policy where, once a Local Planning Authority has resolved to grant planning permission, it is necessary to consult with the Secretary of State (SoS), as the SoS may wish to “call in” the application to determine himself. This method of communication by which an LPA consults with the SoS is sometimes (as in paragraph 8.5 page 42 of the current Constitution) referred to as a notification. Having regard to the comments of the CRWP and in order to avoid any confusion with the term “notification” referred to above, it is considered pertinent to amend paragraph 8.5 (page 42) of the Constitution to prevent any ambiguity.

2.11 Accordingly, it is proposed that paragraph 8.1 of Section 8 of Table 3 to Part 3 of the Constitution be amended as such (the existing words to be removed are shown as struck-through):

8.1 those applications or notifications that any member of the Council requests be determined by the Planning Committee and the grounds on which it warrants discussing by the Planning Committee (such must be made in writing to the Head of Planning specifying material planning grounds on which the request is made and received within 21 days or publication of the weekly list whichever is the latter);…..

2.12 It is also proposed that Paragraph 8.5 be amended as such (the existing words to be removed are shown as struck-through and additional words shown in *italics*):

8.5 those applications or notifications where there is a significant departure from Development Plan policy and which would be required to be the subject of a notification to *consultation with* the Secretary of State;

**Background to Change 2**

2.13 To ensure that the most significant decisions for approval are consistently taken by members at the Planning Committee (i.e. without the need for “call-in”) it is proposed that the threshold for non-residential development be lowered from 5,000 m2 to 2,000 m2. In practice, this is the criterion that is already being used for significant/contentious applications that fall below the current 5,000 m2 threshold, with these being referred by the Head of Planning to the Planning Committee for decision where the recommendation is for approval.

2.14 A recent example of such an application was the reconfiguration and extension of Royal Victoria Place, which (as it was not “called-in”) could have been determined under delegated powers.

2.15 Accordingly, it is proposed that the Constitution be amended as such:

8.3 proposals recommended for approval (but not including Reserved Matters, or variation of conditions on a major application including material
minor amendments or applications for a material minor amendment) comprising:

(a) twenty or more dwellings (detailed and outline applications) except where the application is for a substitution of house types on a scheme already benefiting from an extant planning permission;
(b) commercial floor space of 5000 m² or more comprised in Use Class B1 (Business) and/or Use Class B2 (General Industrial) and/or Use Class B8 (Storage or Distribution) non-residential floor space by means of new build or conversion of 2000 m² or more.

3 AVAILABLE OPTIONS

3.1 The proposed changes outlined above need to be considered by the Council to ensure that the Constitution is clear, up-to-date and provides certainty for all interacting with the Planning Service, but also to ensure that significant planning decisions are made at the right level and that the risk of development being allowed to go ahead by default is limited.

Do Nothing

3.2 After consideration of the issues raised, the Council could choose to do nothing and continue to operate in accordance with the Constitution as currently drafted. This would result in the potential for approvals to be made by default and decisions on significant planning proposals being made by officers remaining. Whilst the Head of Planning could continue to use referral powers to ensure these decisions are taken by the Planning Committee, the Constitution does not provide the necessary level of certainty about the decision making procedures for those seeking planning permission which could lead to complaint and/or challenge.

3.3 Furthermore, the “do nothing” option would mean leaving the rules and procedures unchanged thereby potentially failing in the statutory duty to secure continuous improvement in the way in which the Council’s functions are exercised.

Approve as set out

3.4 To ensure that the Constitution is: (a) up-to-date; (b) provides certainty for all users of the service; (c) requires significant planning applications recommended for approval to be determined by the Planning Committee where there has been no Member call-in; and (d) minimises the risk of notifications being approved by default, both recommendations proposed need to be agreed.

Approve some but not all recommendations

3.5 This is an option, the effect of which would be dependent on which recommendations were not taken forward.
4 PREFERRED OPTIONS AND REASONS FOR RECOMMENDATIONS

4.1 Preferred Option: (a) The Full Council is asked to approve the proposed changes to paragraphs 8.1 and 8.5 of Section 8 of Table 3 to Part 3 of the Constitution to ensure it is up-to-date and provides for good decision making; and

(b) The Full Council is asked to approve the proposed changes to paragraph 8.3 of Section 8 of Table 3 to Part 3 of the Constitution to ensure it is up-to-date and provides for good decision making.

5 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 The proposed changes were discussed with the Portfolio Holder for Planning and Transportation, who supported them and also with CRWP who agreed them, subject to further explanation regarding “notifications” and a further change to paragraph 8.5 (page 42) to remove any ambiguity regarding consultation with the SoS on certain applications. Relevant extracts of the draft minutes from the meeting are attached as Appendix C.

5.2 The Audit and Governance Committee also agreed the proposed changes without modification.

6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 If agreed by Full Council, the approved changes to the Constitution will be made.

7 CROSS-CUTTING ISSUES AND IMPLICATIONS

<table>
<thead>
<tr>
<th>Issue</th>
<th>Implications</th>
<th>Sign-off (name of officer and date)</th>
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<tr>
<td>Legal including Human Rights Act</td>
<td>The Council is required by the Local Government Act 2000 to have a Constitution that is up to date and fit for purpose. The Council also has a statutory duty to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. Review of the Constitution demonstrates compliance with the requirements and duties.</td>
<td>Keith Trowell Principal Lawyer and Deputy Monitoring Officer (31/08/16)</td>
</tr>
<tr>
<td>Finance and other resources</td>
<td>There are no new financial implications.</td>
<td>Lee Colyer Director of Finance and Corporate</td>
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Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups. The decisions recommended through this paper have remote or low relevance to the substance of the Equality Act. However, it should be noted that the recommendations in this paper do not alter the need to consider the requirements of the Public Sector Equality Duty within individual planning decisions.

8 REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

Appendix A: [Extract from part 3 of the Constitution (updated June 2016) – showing proposals as tracked changes]

Appendix B: [Extract from part 3 of the Constitution (updated June 2016) – clean version, as currently exists]

Appendix C: [Extract of notes of Constitution Review Working Party meeting held on Thursday 11 August 2016]

9 BACKGROUND PAPERS

The Tunbridge Wells Borough Council Constitution - December 2013 (as updated June 2016)

Constitution Review Working Party 11 August 2016 2016 - Agenda Items 5 and 6: Delegations to Head of Planning

Notes of Constitution Review Working Party meeting held on 11 August 2016

Audit and Governance Committee 20 September 2016 – Agenda Item 6: Joint Report of Acting Head of Planning Services and Head of Legal Partnership and Monitoring Officer