

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

Final Decision-Maker	Full Council
Portfolio Holder(s)	The Leader, Councillor Jukes and the Portfolio-holder for Planning & Transportation, Councillor McDermott
Lead Director	Lee Colyer, Director of Finance, Policy & Development
Head of Service	Karen Fossett, Head of Planning
Lead Officer/Report Author	Stephen Baughen, Building Control and Development Manager
Classification	Non-exempt
Wards affected	All

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 Full Council is requested to approve revised wording to:

(a) Paragraph 8.1 of Table 3 of Annex C to Part 3 of the Constitution as set out in paragraph 2.4 below; and

(b) Paragraph 5.1 of the Planning Committee Procedure Rules in Part 4 of the Constitution as set out in paragraph 2.5 below.

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

- A Confident Borough ensuring that planning applications are determined within legislative time limits and to ensure that robust decision making processes for planning applications are in place such that all relevant matters are properly and thoroughly considered

Timetable

<i>Meeting</i>	<i>Date</i>
Constitution Review Working Party	2 June 2017
Audit and Governance Committee	27 June 2017
Full Council	26 July 2017

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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 as and when required to assist the Audit and Governance Committee with consideration of reviews of the Constitution prior to recommendation to Full Council and to act as a ‘sounding board’ for the delegated decision making power of the Monitoring Officer.
- 1.2 The CRWP reviewed elements of the Constitution at their meeting on 2 June 2017 at the request of officers and supports the recommended changes set out in this report. The Audit and Governance Committee considered this matter at their meeting held on 27 June and unanimously supported the recommendations.
- 1.3 This report supersedes the original report on this matter published as part of the Agenda for the Audit and Governance Committee (published on 19 June 2017). The original report set out only part of the changes recommended by CRWP (at paragraph 2.4 of that report). This supplementary report corrects that error – please refer to paragraph 2.4 below.
- 1.4 Appendix A to this report has also been superseded to reflect the final draft minutes of CRWP.
- 1.5 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

- 2.1 At CRWP meetings during 2016 amendments to the procedure for calling-in planning applications in order to clarify and better define the process were discussed in depth. One particular question arose concerning a change in the procedure that had been in place in 2005. In the 2005 Good Practice Guidelines for Members Taking Part in the Planning Process, members were enabled to call-in planning applications for consideration where there was a planning issue that warranted consideration by a Planning Committee or where there was a significant level of local concern.

- 2.2 However, in later editions of the Constitution the significant local concern element as a reason for call-in was omitted from paragraph 8.1 of Table 3 in Annex C of Part 3. The current wording in Paragraph 8 is :

“8. Determine all forms of planning and other applications and all notifications submitted under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, Localism Act 2011 or under any related principal or secondary legislation, except the following:

8.1 those applications 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);”

It was the view of CRWP that the clarification proposals were acceptable but also that the element of significant local concern should be reintroduced and officers were asked to revise Paragraph 8.1 so as to include that element.

- 2.3 Proposed revised wording was considered at a CRWP meeting on 10 March 2017 when officers were asked to amend and further clarify the proposed wording. Subsequently a revised wording was referred to all members via their respective political groups and feedback was referred back via their designated representatives on the CRWP.
- 2.4 The CRWP met on 2 June 2017 and considered and approved the following wording :

8. Determine all forms of planning and other applications and all notifications submitted under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, Localism Act 2011 or under any related principal or secondary legislation, except the following:

8.1 those applications where any Member has requested in writing that the application be “called in” to be determined by the Planning Committee, and the “call in” and reasons for the “call in” have been agreed as valid by the Portfolio Holder for Planning and Transportation following discussion with the Head of Planning (or delegated deputy).

8.1.1 The reasons for which an application can be called in must include:

A) the material planning issue(s) that warrant(s) the application being determined by Committee;

and/or

B) evidence and the reason(s) of significant local concern that warrant(s) the application being determined by Committee.

8.1.2 The request for the “call-in” must be received in writing addressed to the Head of Planning Services within five weeks (35 days) of the date that the application is originally made valid.

- 2.5 Additionally, CRWP agreed an amendment to Paragraph 5.1 of the Planning Committee Procedure Rules in consequence of the proposed changes to paragraph 8 of Table 3. The current wording is :

“5.1. The Constitution provides that any member may “call in” any planning application – i.e. require that an application be determined by the Planning Committee rather than by an officer under delegated authority. Members should exercise discretion in using this power and should only call in applications where there is a material planning issue which warrants consideration by the Planning Committee. Any request to call in an application should be made in writing to the Head of Planning Services and give a material planning reason for the call in.”

The proposed wording agreed by CRWP is :

5.1. The Constitution provides at Paragraph 8 in Table 3, of Annex C of Part 3 that any member may “call in” any planning application – i.e. require that an application be determined by the Planning Committee rather than by an officer under delegated authority. Members should exercise discretion in using this power and should only call in applications where there is a material planning issue which warrants consideration by the Planning Committee, or where there is evidence of local concern that warrants consideration by the Planning Committee. Any request to call in an application should be made in writing to the Head of Planning Services.

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, the Council could choose to do nothing and continue to operate in accordance with the Constitution as currently drafted. This would result in the members being unable to call-in planning applications on the sole grounds of significant local concern. 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.
- 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 and (b) provides greater opportunity for applications attracting significant local concern to be determined by the Planning Committee.

4 PREFERRED OPTIONS AND REASONS FOR RECOMMENDATIONS

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

(b) The Committee is asked to approve and recommend to Full Council the proposed changes to paragraph 5.1 of the Planning Committee Procedure Rules in Part 4 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 have been discussed by members at Group meetings and been broadly supported also with CRWP who agreed them. The Audit and Governance Committee have also considered this matter and have given their unanimous support for the recommendations. The relevant paragraphs of the final draft minutes from the most recent CRWP meeting are attached as supplementary Appendix A.

6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The recommendations in this report, if agreed, will be progressed as set out in the timetable on the front sheet.
- 6.2 If agreed by Full Council on 26 July 2017, the approved changes to the Constitution will be made.
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7 CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off (name of officer and date)
Legal including Human Rights Act	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.	Keith Trowell Senior Lawyer and Deputy Monitoring Officer (31/08/16)
Finance and other resources	There are no new financial implications.	Lee Colyer Director of Finance, Policy and Development (s151 Officer) (5/9/16)
Equalities	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.	Sarah Lavallie West Kent Equalities Officer (8/9/16)

8 REPORT APPENDICES

The following document is to be published with this report and forms part of the report: Appendix A – Extract from Draft Notes of Constitutional Review Working Party meeting held on Friday 2 June 2017

9 BACKGROUND PAPERS

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

Constitution Review Working Party Notes from meetings held on 11 August 2016 and 10 March 2017