

Council

26th February 2007

Review of the Council's Constitution with respect to changes in Planning and Regeneration

Service Area: Regeneration

Wards: All

Summary of report

To set out proposed improvements to the Development Control Committee and to detail amendments to the Council's Constitution considered necessary in order to maintain and enhance the service in accordance with the findings and recommendations of the review of the Development Control Committee by the joint Member / Officer Working Group.

The report also sets out the Constitutional changes in order that the Head of Planning and Building Control and the Head of Delivery and Development has the appropriate delegations currently assigned to the former position of General Manager of Planning Services or Head of Environmental Regeneration together with additional changes namely:

1. issue an enforcement notice in respect of retrospective planning applications refused in line with current delegated powers but that authority to prosecute in the event of the enforcement notice not being complied with remain with the Development Control Committee.
2. authorise tree works and to make/revoke Tree Preservation Orders where there is no significant public interest
3. not to pursue enforcement action if it is considered that it is not expedient to do so.
4. to delegate to Officers the power to determine planning applications on Council owned land under the value of £10,000 but, in the event of the matter attracting significant community interest, the issues would be referred to the Development Control Committee.
5. to serve Section 215 notices subject to a period of 10 days being given prior to service of the Notice to enable Ward Councillors to call-in the notice.
6. To revoke a Tree Preservation Order where an old Order has been updated and a replacement Order has been made or where an old Order no longer protects any trees.

The Working Group also recommended to:

1. ensure that Members of the Development Control Committee are properly trained in probity matters
2. improve the way that the Development Control Committee organises its business and manages persons that wish to address members of the Committee

The Working Group also recommended changes to delegations for the Development Control Committee rather than Cabinet to:

1. approval of conservation area appraisals;
2. the updating of the local listing of buildings,
3. approval of or amendments to sites of importance for nature (SINCs) and sites of local importance for nature conservation (SLINCs),
4. to authorise temporary Stop Notices (currently not included in the Constitution)

Recommendations

That the findings of the Joint Member Officer Working Group as set out in this report be noted and to:

1. Approve the changes to the constitution as set out in the report
2. That the new arrangements be adopted from 1st March 2007.

Resource and legal considerations

If the constitution is amended then revised versions will need to be circulated to all stakeholders so they may have updated copies. It is expected that the costs will be modest and can be met from existing budgets. The report has been written with support from officers in Legal Services.

Citizen impact

The constitution sets out in one document the main operating policies for the Council. By ensuring that the constitution is up to date, fit for purpose and written in a way that makes it easier to understand it will enable more citizens to understand the way in which decisions are taken and so encourage greater engagement in local government. The proposed changes would enable more effective and efficient working that in some circumstances will improve engagement with the citizen by allowing the opportunity to make representation to the Development Control Committee.

Environmental impact

None directly as a result of this report

Performance and risk management issues

It is expected that the proposed changes will help improve the Council's performance in carrying out its planning functions more efficiently and effectively.

Equality implications

The proposed changes do not raise any additional equality issues. By ensuring that all members, officers and stakeholders are aware of the Council's constitution we can all contribute to ensuring that all matters are dealt with by and on behalf of the council are undertaken from a basis of equality.

Consultation

The report has been prepared following the recommendations of the joint Member and Officer Working Group which has representation from all political parties and in consultation with Constitutional and Legal Service officers.

Background papers

Minutes of the meeting of development control joint Member / Officer Working Group held on 21st July 2005 and 30th March 2006

A handwritten signature in blue ink, appearing to read 'Tim Johnson', followed by a vertical line.

Tim Johnson
Executive Director

Date: 16 February 2006

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Background

The planning and development control service has been rejuvenated following criticisms from the Corporate Governance Inspection about how it determines planning applications. As part of the new governance arrangements approved by the Council in January 2004 and amended by Council on 17th January 2005 it was agreed that the new arrangements should be subject to review. The reviews have been undertaken by a joint Member and Officer Working Group and the new arrangements have been fully supported as delivering effective and transparent governance that is delivering significant improvements in performance and which is supported by customers and citizens. This report reflects the recommendations agreed by the working group at its meetings on 21st July 2005 and on 20th March 2006. They are presented to Council for consideration and agreement and a recommendation that the Constitution is amended to incorporate these changes.

Meeting of the Joint Member / Officer Working Group 21st July 2005 – recommendations:

1. Speakers addressing Committee

Members were advised of the considerable amount of time that can be taken up by speakers addressing the meeting and the repetitiveness of the comments often received. It was agreed that the rules as set out in the Constitution, on members of the public addressing the Development Control Committee on a planning application, be amended and that they be allowed 3 minutes per speaker and that Elected Members be allowed 5 minutes as at present.

Effect of the proposed changes:

It has been evident that three minutes is a reasonable period of time in order to allow persons wishing to address the Committee. Many speakers feel that they should take up the full existing five minutes allocated to them which usually results in repeating points already made. This will help reduce the total time taken for the Committee to conclude its business which can run for up to three hours where there are many speakers wishing to speak on items on a particular agenda. The proposed change will help reduce the amount of time that some speakers have to wait and help focus the overall presentation and effectiveness of the meeting without losing the public engagement and the democratic transparency of the meeting.

Requires amendment to the Constitution as follows:-

To amend the terms of reference of the Development Control Committee in Part 3 Table 2 of the Constitution at paragraph 13(g) page 3.28 Public Speaking Development Control Committee by deleting, "Speakers will be limited to five minutes each in respect of each application" and replace with:

"Speakers will be limited to three minutes each in respect of each application".

2. Meeting start time and order of service

The Working Group agreed to start the Development Control Committee meeting at 5.30 p.m. to enable individual reports on issues other than planning applications to be considered at the beginning of the meeting and that the application list of planning applications section of the agenda commence at 6.00 p.m., or later, for a trial period of four months.

Effect of proposed changes:

Experience has shown that almost all speakers wish to address planning applications on the agenda and therefore it is right that these are dealt with first of all on the agenda in order to reduce the time they have to wait. However, in many cases officers have to wait over two hours to present reports which deal with Conservation and TPO matters etc. It is therefore considered that if these reports were to be dealt with prior to dealing with planning applications which would remain to be heard from 6pm, this would avoid the unnecessary use of officer time and reduce the overall finishing time for Members of the Committee without effecting the current procedures for the planning applications list.

Requires amendment to the Constitution to amend at Part 4 5(b) page 4.15 – Time, Place of Meetings by deleting, “Other ordinary meetings of the Council shall normally be held at the Council House, Walsall at 6.00 in the afternoon on such dates as shall be agreed by the Council at its annual meeting” and replace with:

“Other ordinary meetings of the Council shall be held at the Council House, Walsall at 6.00pm in the afternoon save that meetings for the development control committee for consideration of business that excludes the determination of planning applications shall commence at 5.30pm on such dates as shall be agreed by the Council at its annual meeting”.

3. Officer delegation on simple enforcement matters following refusal of planning permission

In the event of Officers refusing a retrospective planning application under their delegated powers, a report is then necessary to request Committee to approve enforcement action and prosecution proceedings. Officers requested that delegated authority be given to issue an enforcement notice in respect of retrospective planning applications. In the event of the notice not being complied with, that authority to prosecute should remain with the Development Control Committee.

This was agreed subject to Officers keeping Members advised of such delegated decisions being taken.

Effect of proposed Changes:

Time is lost having to report the matter to the DC Committee to receive authorisation to take enforcement action for a development that has been refused by the Council under delegation by officers. It normally follows that the refusal of planning permission for a retrospective application warrants the development as unacceptable in planning terms. Where the decision is taken by the Committee it normally follows that a second recommendation to enforce is also agreed. In order that an appropriate involvement is maintained by Members it is not proposed that the delegation should include prosecution which would remain with the Committee. Ward Members will be advised of all delegated enforcement action in their ward when the notice is issued and recorded as part of the quarterly development control update report.

Requires amendment to the Constitution at Part 3.2 6 – Development Control Committee by deleting the wording at paragraph 15 page 3.24 from: “Power to issue an enforcement notice...” and replace with:

“Power to issue an Enforcement Notice save in circumstances where the Council refuse planning permission for retrospective development”.

To insert a new paragraph (7)(cc) at Table 5, 39 page 3.5.16 as follows:

“To authorise the issue of Enforcement Notices in circumstances where the Development Control Committee has refused planning permission for retrospective development”.

4. Tree Preservation Orders

Members were reminded that Officers had been delegated powers to authorise tree works, but not to make/revoke Tree Preservation Orders. Officers requested that, in instances where there was no significant public interest, authority be delegated to Officers to make/revoke Tree Preservation Orders.

Effect of Proposed Changes:

This will save valuable time in determining applications for works to protected trees providing a quicker and effective service to applicants. This delegation would be based on the same principles as used in other delegations to officers such as the determination of planning applications thereby ensuring any controversial or more balanced decisions are taken by the Committee.

Requires amendment to the Constitution at Table 5 39A Head of Regeneration at paragraph (1)(c) page 3.5.20 by inserting the following words after “remove trees”: **“and to make and/or revoke Tree Preservation Orders”.**

5. “Expedient to enforce” decisions being delegated to Officers

The working Group agreed that Officers be delegated power not to pursue enforcement action if it was considered that it was no longer expedient to do so.

Effect of Proposed Changes:

This has long been custom and practice but has not so far been incorporated into the Constitution. Therefore no changes are anticipated other than the Council would be better able to demonstrate more appropriately that Officers have the legitimacy to act in this regard.

Requires amendment to the Constitution to at table 5.39 page 3.5.20 to insert at 39 (7) a new paragraph (12) as follows:

“The authority not to pursue enforcement action if it is considered that it is no longer expedient to do so”

6. Determination of planning applications on council owned land

The Working Group agreed to delegate to Officers the power to determine planning applications on Council owned land under the value of £10,000 and, in the event of the matter raising significant community interest; the issues would be referred to the Development Control Committee.

Effect of the Proposed Changes:

On several occasions the Committee are presented with fairly routine planning applications for changes of use of small areas of land that are not controversial and the only reason that they are being asked to consider the application is that the current delegations do not provide for officers to determine applications where it would provide for a disposal of council owned land. The proposed threshold is considered to be an appropriate level that would protect the council from claims that it was approving development other than on planning merits whilst retaining appropriate transparency and an a proportionate democratic process. Members would still be able to call these applications to be determined by the Committee as with all other applications.

Requires amendment to the Constitution at Table 5 39(l)(v) page 3.5.17 Head of Planning and Building Control by inserting the following words after “land”: **“under the value of £10,000.00 where there is no significant community interest”**.

Meeting of the Joint Member / Officer Working Group 30th March 2006 – recommendations:

7. Changes to Development Control Committee from Cabinet

The working group recommended that the following matters should be agreed by the Development Control Committee rather than by Cabinet as presently set out in the Constitution:

- Approval of and amendment to the local list of buildings
- Approval of conservation area appraisals
- Approval of or amendments to sites of importance for nature (SINCs) and sites of local importance for nature conservation (SLINCs)

The current delegation for the above matters rests with the Cabinet to decide but the working group considered that they would be more suited to being determined by the DC Committee given the nature of these matters and that Members of the Committee would have the more appropriate training and experience prior to onward submission for approval to Council.

Requires amendment to the Constitution at Table 2.6 (1) at page 3.2.5 in accordance with The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001 and 2005 by inserting the following new paragraphs 28, 29 & 30 as follows:

28. Approval of and amendment to the local list of buildings

29. Approval of conservation area appraisals

30. Approval of or amendments to sites of importance for nature (SINCS) and sites of local importance for nature conservation (SLINCs)

8. Power to authorise Temporary Stop Notices

This is a relatively new procedure which was brought into legislation in 2005 in order to give local planning authorities the chance to stop development which they considered to be breaches in planning control for a period of 28 days.

Effect of proposed changes:

As with full Stop Notices the Council can be liable to challenge for compensation if it is unsuccessful in defending its action. As this is a relatively new type of enforcement action it is not currently in the Constitution. The Local Authorities (Functions and Responsibilities) (Amendment) (No 2) (England) Regulations 2005 provide that the power to issue a temporary Stop Notice is not to be the responsibility of an authority's Executive. Therefore, it is considered that the Development Control Committee should hold delegation to authorise the issue of a temporary Stop Notice pursuant to Section 171E of the Town and Country Planning Act 1990.

Requires amendment to the Constitution at Table 2 6(i) page 3.2.5 to insert a new paragraph 31 Power to Issue a Temporary Stop Notice and with the associated citation of an authority being Section 171E of the Town and Country Planning Act 1990.

9. Number of speakers allowed to address the Development Control Committee

The working group considered the findings of customer exit surveys and questionnaires received from applicants, individuals who have spoken at the Committee and those organisations that have been consulted as part of the planning process.

It was agreed that speakers be restricted to two speaking in favour and two speaking against, a planning application, this number to include any elected members indicating a wish to speak.

Effect of the Changes:

Currently up to six persons can book themselves in to speak about a particular planning application which includes ward members. It is proposed that due to the amount of time this can take to administer at the meeting and the experience that much is repetitive only four speakers should be allowed, two per each side of the debate. Rather than Members being considered separately they should be included in the two allowed. In many instances Members represent a constituent or a number of constituents and therefore it is considered that there would be little or no impact on the transparency and democratic process or outcomes of individual applications.

Requires amendment to the Constitution at Part 3 Table 2 (13)(f) page 3.2.8 by inserting a new replacement paragraph:

“The number of speakers will be restricted to a maximum of two in favour of an application and two opposing an application chosen by order of notification of a wish to speak. The number of speakers allowed will include Councillors who are not members of the Committee”.

Delete the following:

“The number of speakers will be restricted to a maximum of two in favour of an application and two opposing an application chosen by order of notification of a wish to speak. In addition, up to two Councillors who are not members of the Committee may also address the Committee upon each application”.

10. Training for members of the Development Control Committee

In considering training for members of the Development Control Committee, the working group was advised that in order to limit the risk of poor decision making and the potential legal challenge on an unsafe decision of the Committee, training must include probity. It was suggested that a training session take place during the first week in June in order to capture new members and this would include probity and code of conduct. This was undertaken in June 2006 and is proposed to be arranged at the same time in future years. A further training session also undertaken each year would focus on specific issues. It was also that the Constitution be amended to require members of the Development Control Committee to attend a training session prior to sitting on the Committee and that the training be renewed biannually;

Effect of the Changes:

It is important that Members continually update themselves on planning decision making and in particular the issues surrounding probity and code of conduct. The working group agreed that this would reduce the risks of any challenge to decisions made from any aggrieved party and that the training should be made compulsory. The need to attend the training events at least every two years was also agreed for the same reasons. Such events are usually delivered by experienced planning solicitors and cover relevant and current probity issues. In order to help Members attend such events would be organised twice a year and start at 6pm until 8pm.

Requires amendment to the Constitution at Table 2 6 page 3.2.2. To insert a new heading, “**Training**” after the heading “Access to Information”. Under the heading, “Training”, to insert the following wording:

“All members of the Development Control Committee shall attend a training session on Planning Law, Policy and Probity for which the course content will be approved by the Assistant Director for Regeneration prior to sitting on the Committee the first time and subsequently to attend training annually”.

11. Delegations

a) 215 Notices

It was recommended that the authorisation and service of Section 215 Notices be delegated to the appropriate officers in order to speed up the service of none urgent notices with a period of 10 days being given prior to service to enable Ward Councillors to call-in the notice.

Effect of the proposed changes:

This would speed up the total time taken in order to take action to tidy up untidy land and buildings as a Section 215 notice could be served up to three weeks earlier than at present due to the lead in time and Committee cycle. However, in order to keep Ward Members involved in the decision making process all three members will be given written notice of the intention to take such action and the reasons for it. They can effectively call the decision to be taken to the next available Committee if they feel that it would be appropriate. If no reply is received in writing within the ten day period then the notice would be served.

Requires amendment to the Constitution at table 5 39(7) page 3.5.20 and insert new paragraph (iii) to read as follows: **Authority to issue a section 215 Notice subject to a period of 10 days being given to ward members to call in the Notice to the next meeting of the Development Control Committee**

b) Revocation of an old and replaced Tree Preservation Order

It was recommended that the Head of Planning and Building Control be delegated the power to revoke a Tree Preservation Order where an old Order has been updated and a replacement Order has been made or where an old Order no longer protects any trees but that the Development Control Committee retain the power to confirm Tree Preservation Orders.

Effect of proposed changes:

This is primarily an administrative function and does not involve the exercising of a planning judgement in that it is only relevant when a new replacement TPO has been confirmed. This would speed up the process and simplify the keeping of up to date TPO records.

Requires amendment to the Constitution at Table 2(a)(vi) page 3.2.7 to insert at paragraph 4 in the second column after the phrase “Section 197 – 200, 202, 206, 210 and 214 of the Town and Country Planning Act 1990” the following wording as inserted by the Local Authority’s (Functions Responsible) (Amendment) Regulations 2001-2212:

“Section 197-214C of the Town and Country Planning Act 1990 and the Trees Regulations 1999(S.I. 1999/1892)”.

To insert the following wording at Table 5 39A page 3.5.20 Head of Delivery and Development and a new paragraph as follows:

“(e) To revoke a Tree Preservation Order in circumstances when an old Order has been updated and a replacement Order has been made or an old Order no longer protects any trees.