

Eden District Council
Accounts and Governance Committee
Council

11 April 2019

**Review of the Constitution - Scheme of Delegation and
Code of Planning Conduct**

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| Portfolio: | Resources and Eden Development |
| Report from: | Assistant Director Governance |
| Wards: | All Wards |
| OPEN PUBLIC ITEM | |

1 Purpose

- 1.1 To seek the comments of Accounts and Governance Committee on the proposals prior to submission to Council.
- 1.2 To seek the approval of Council to authorise the proposed amendments to be made in the Constitution relating to the delegated officer planning decisions and the questioning of members of the public speaking at Planning Committee.

2 Recommendation

- 2.1 Consideration be given to the approval of the recommended amendments to:
 - (1) the scheme of delegation as set out in Appendix 1 to this report; and
 - (2) paragraph 13 of the Council's Code of Planning Conduct and Practice as set out in Appendix 2 to this report.
- 2.2 That authorisation be given to the Assistant Director Governance to make the approved amendments to the Planning Code of Conduct.

3 Report Details

Background

- 3.1 In 2017 the Planning Services Development Manager suggested draft changes to the Constitution at Part 3, paragraph 4.4(1)(a)(i) (page 92 of the Constitution). The rationale behind the proposed changes was to prevent unnecessary applications proceeding to Planning Committee. This matter was considered by Planning Committee on 14 December 2017 having previously been considered by Accounts and Governance Committee on 13 November 2017. The process was put on hold pending the outcome of the Planning Advisory Service Peer Review which commenced in March 2018.
- 3.2 The Planning Advisory Service was invited by the Council to carry out a review of the operation of Planning Committee. This request was made in light

of the Council having been notified by the Ministry of Housing, Communities & Local Government that it had been put at risk of Special Measures designation relating to the quality of its planning performance on the determination of Major planning applications.

- 3.3 The Peer Review involved two Peer Reviewers visiting the Council in March 2018. The process involved interviews with Council officers and interviews with Members of the Planning Committee. The Peer Reviewers also considered Council planning policy and procedure documents and statistical returns to Ministry of Housing, Communities & Local Government. They also attending the Council's Planning Committee Meeting held on 15 March 2018. The review concluded with the publication of a final report in July 2018, the findings of which were presented to an informal meeting of Planning Committee members on 27 September 2018.
- 3.4 The Peer Review report outlined a number of recommended alterations and improvements that could be made to the Council's Planning Committee process. If such changes are to be implemented two of the proposed changes require an alteration to the Council's scheme of delegation, as proposed within this report.

Items Put Before Planning Committee

- 3.5 The Planning Advisory Service Peer Review report highlighted the Council's current 'call-in' procedure and Scheme of Delegation as a particular cause for concern. On this matter, the Peer Review made the following comments:

'Call-in – The ability of only one person to call in an application can put the reputation of the Council at risk, especially if it is not on vitally material planning matters, this needs urgently reviewing.'

'Delegation – Clarification of the scheme of delegation is needed. Applications should only be presented to this important committee when they are clearly in the public interest and there are competing material planning considerations that need to be weighed in the decision making process. The current delegation scheme requires applications to be determined by the Planning Committee when one request is made. This is untenable and leads to a lack of clarity in the role of the Committee.'

- 3.6 The proposed amendments to the scheme of delegation to the Assistant Director Planning and Economic Development are as set out in Appendix 1 to this report. The rationale behind the change is to prevent unnecessary applications proceeding to Planning Committee, reducing the burden on applicants, members of the public, the Planning Committee and Council Officers. In relation to the undue burden placed upon the Planning Committee, the Planning Advisory Service Peer Review specifically listed the following areas:

'1. The ability of any individual resident (who may not be directly impacted by the development) requesting 'presentation' to the Committee without citing any material planning reasons or a 'locus standi' regarding the application.*

2. Automatic presentation of an application to the committee when the officer recommendation is opposite to the Town or Parish Councils recommendation.'

Locus standi means the ability of a party to demonstrate sufficient connection to or harm from a planning proposal to justify their participation.

- 3.7 It is considered that there is merit in the suggestion that any application which is subject to a request by a Member to proceed to Planning Committee should be justified by (a) valid planning reason(s). Furthermore, it is considered that this should be limited to the relevant Ward Member in which the application is located. There should be consistency in this and any objections should be justified by valid planning reasons in order to merit an application being brought to Planning Committee for consideration.
- 3.8 Valid planning reasons relate to either references to relevant development plan policies or material considerations. The Council cannot take non-valid planning reasons into account when determining a Planning Application. Material considerations are matters that should be taken into account in deciding a planning application and include (but are not limited to):
- Overlooking/loss of privacy;
 - Loss of light or overshadowing;
 - Parking;
 - Highway safety;
 - Traffic;
 - Noise;
 - Effect on listed building and conservation area;
 - Layout and density of building;
 - Design, appearance and materials;
 - Government policy;
 - Disabled persons' access;
 - Proposals in the Development Plan;
 - Previous planning decisions (including appeal decisions);
 - Nature conservation.
- 3.9 Valid planning reasons exclude objections made on the following grounds:
- Devaluation of property;
 - Loss of view;
 - Effect on trade/commercial competition;
 - Effect on private or civil rights;
 - Personal or financial circumstances or the character of the applicant;
 - Third party interest; or
 - Matters covered by other legislation or controls including Building Regulations and licensing.

- 3.10 The constitution in its current form, leaves the Council vulnerable to challenge where items are more susceptible to being refused for non-material and valid reasons. This is a frequent occurrence with items on the Planning Committee agenda. Furthermore, the ability for a single member of the public to 'call in' an application without valid planning reason, can provide a false hope and expectation to members of the public that an application may be approved or refused, when in fact there is no planning basis or merit for doing so. This frequently results in items being put before Members of the Planning Committee to determine, where there is no planning judgement or option available. In such circumstances the Planning Committee faces a situation whereby it is only able to reasonably approve or refuse the recommendation without leaving the Council vulnerable to challenge and the potential for awards of costs.
- 3.11 In the 2017/2018 financial year, a total of 10 planning appeals were decided by the Planning Inspectorate against refusals to grant planning permission by Eden District Council. 4 of the appeals were dismissed and 6 were allowed. In relation to the 6 appeals that were allowed, 4 related to decisions made by the Planning Committee contrary to officer recommendation.
- 3.12 The amendment to prevent major applications being brought to Planning Committee solely by virtue of being major is that in the event that there are no objections from statutory bodies or the public, there is no reason why such applications cannot be determined under delegated powers. Clearly if Officers have any difficulties or consider it appropriate to consult Members then a decision could nonetheless be taken by the Planning Services Development Manager to seek the views of Members by taking the report to Planning Committee. If such a major application were controversial or sensitive it would be brought to Planning Committee automatically.
- 3.13 The proposed amendments and the comments which have been made on them have been considered by the Working Group established by the Accounts and Governance Committee. The Working Group has proposed that the valid planning grounds should be included in the Appendix 1 to provide clarity.

Questioning of Public Speakers

- 3.14 A further recommendation relates to the ability of Members of the Planning Committee to ask questions of speakers, both for and against an application, following their presentation to the committee as set out in paragraph 13 of the Code of Planning Conduct and Practice. This matter is currently enabled through Part 5 (d) (paragraph 13.4) (page 309 of the Constitution). The rationale behind this proposed change relates to concerns regarding the appropriateness of the Members questioning members of the public, and the impact that this has upon Members' Debate. Appendix 2 to this report sets out a suggested revision to paragraph 13 of the Code of Planning Conduct and Practice
- 3.15 In general, public speaking, particularly at a large public meeting such as Planning Committee, can be a nerve wracking and daunting experience for members of the public. For people unaccustomed to public speaking, presenting before the Planning Committee can be intimidating and often at

times highly emotional. Such feelings are often exacerbated by the frequent prolonged periods of questioning by Members of the Planning Committee.

3.16 In addition it is considered that the benefit and usefulness of much of the additional information obtained through the public questioning is in itself questionable. In many instances the information obtained, and debate that follows, often relates to non-material planning matters which are not relevant and cannot be taken into consideration in the determination of an application. It is considered more appropriate for Members' questions to be directed towards Planning Officers.

3.17 Furthermore, the questioning of speakers by Members frequently leads to debate, often on non-material planning matters. The main negative effect of this being that it stifles debate when later required in the consideration of the application. This can lead to the perception that items are not being properly debated and considered by the Planning Committee, adversely affecting its reputation. This matter was highlighted within the Planning Advisory Service Peer Review Report which noted:

'...there is concern that the current practice of questioning speakers turns into debate and the normal rules of asking questions only through the Chairman are lost.'

3.18 The issue has been considered by the Accounts and Governance Committee's Working Group. The Working Group has proposed that the Chairman should be able to seek a contribution from a member of the public where she/he may be able to assist on a relevant matter. The general questioning of members of the public is proposed to be discontinued.

4 Policy Framework

4.1 The Council has four corporate priorities which are:

- Decent Homes for All;
- Strong Economy, Rich Environment;
- Thriving Communities; and
- Quality Council

4.2 This report meets the Quality Council corporate priority.

5 Consultation

5.1 The Planning Committee considered the proposals set out within this report on the 13 December 2018. The Committee made the following resolution:

- that the views of Planning Committee will be presented to a meeting of the Accounts and Governance Committee, with the matter being the subject of a final decision by Council.

5.2 The Planning Committee raised the following comments:

1. Members have gone against Officer recommendations on a number applications coming to the Planning Committee because of objections raised by Parish Councils and members of the Public.
2. The questioning of speakers can provide clarification for Members.
3. The questioning of speakers can be intimidating.
4. The questioning of speakers is not permitted within other Councils.

5. Reducing the number of applications coming to the Planning Committee would reduce the length of the meetings, this could in turn, encourage public involvement.
 6. The Peer Review has recommended additional training.
- 5.3 The Accounts and Governance Committee considered the proposals set out within this report on the 21 February 2019. The Committee made the following resolution:
- the Constitution Review Working Group collate the views of the Accounts and Governance Committee and report back via email, prior to a formal response being submitted to Council on 11 April 2019.
- 5.4 The Accounts and Governance Committee raised the following comments:
1. the recommendations arise from the Peer Review of the Planning Committee;
 2. there was support for the proposed changes to the Scheme of Delegation, with some reservations;
 3. there are concerns regarding restricting Member requests for an application to proceed to Planning Committee to the relevant Ward Member as neighbouring Wards may also be affected by the application;
 4. there are concerns that members of the public may not be aware of what constitutes a 'valid planning reason';
 5. Parish Councils have excellent local knowledge of their Ward;
 6. there are concerns that reducing the opportunity for Parish Councils to bring applications to the Planning Committee may make the process more remote from the public's perspective;
 7. Parish Council involvement may be the only way an applicant can have their application heard by the Planning Committee; Parish Councils could still bring applications before the Planning Committee if they presented a valid planning reason;
 8. Parish Councils often bring applications to the Planning Committee without attending the Planning Committee meeting this means that nothing has been added to the debate as their written objections are already considered by Officer and are included in the decision making process. Parish Councils can't be forced to attend Planning Committee meetings;
 9. Parish Councils can still request to speak at Planning Committee meetings; questioning speakers allows Members to clarify areas of concern, the five minutes given for representations may not be long enough for speakers to cover all their points;
 10. findings from the Peer Review noted that the questioning of speakers was not restricted to material planning considerations;
 11. the speakers can find the process daunting, being asked questions can be distressing;
 12. other District Councils in Cumbria and the surrounding Counties do not question speakers; and
 13. Members would be able to put questions to Officers.

- 5.5 Council is recommended to have regard to the comments and recommendations of the Planning Committee and Accounts and Governance Committee when considering this report.

6 Implications

6.1 Financial and Resources

- 6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 17 September 2015. There are no financial implications of the recommendations.

6.2 Legal

- 6.2.1 The Constitution has over recent years been reviewed on an annual basis. No legal implications are considered to arise from the proposed amendments to the Constitution.

6.3 Human Resources

- 6.3.1 There are no human resources implications arising out of the proposals within this report.

6.4 Statutory Considerations

| Consideration: | Details of any implications and proposed measures to address: |
|--|--|
| Equality and Diversity | There are no implications arising from this report. |
| Health, Social Environmental and Economic Impact | There are no implications arising from this report. |
| Crime and Disorder | There are no implications arising from this report. |
| Children and Safeguarding | There are no implications arising from this report. |

6.5 Risk Management

| Risk | Consequence | Controls Required |
|--|---|--|
| Over time the Constitution ceases to be fit for purpose and does not include the provisions which are considered to be necessary and required. | Risk of decisions being challenged due to not being made in accordance with proper administrative requirements. | Annual consideration given to the need to review the Constitution. |

7 Other Options Considered

- 7.1 The Committee could decide to support the proposed amendments to the constitution in full or in part or resolve not to support the proposed amendments at all.

8 Reasons for the Decision/Recommendation

8.1 To enable amendments to the Constitution.

Tracking Information

| Governance Check | Date Considered |
|--|------------------------|
| Chief Finance Officer (or Deputy) | 1 April 2019 |
| Monitoring Officer (or Deputy) | 1 April 2019 |
| Relevant Assistant Director | |

Background Papers:

Appendices:

1. Proposals for amendments to the scheme of delegation to the Deputy Director Technical Services. The current wording is set out at page 92 of the Constitution.
2. Proposals for amendments to Paragraph 13 of the Code of Planning Conduct and Practice. The current wording is set out at pages 308 to 310 of the Constitution.

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Proposals for amendments to the scheme of delegation to the Deputy Director Technical Services. The current wording is set out at page 92 of the Constitution.

4.4 Delegation of Council Functions to the Council's Officers

1. Town and Country Planning and Development Control.

a) Delegations to ~~Assistant~~Deputy Director ~~Technical Services~~Planning and Economic Development:

- i) to determine all planning applications and to make observations on all statutory and other notifications except:
 1. applications ~~where~~ for which an approval would be contrary to policy - ie departures and potentially justifiable exceptions;
 2. applications which are considered by the DeputyAssistant Director ~~Technical Services~~Planning and Economic Development to be of a ~~major~~, controversial or sensitive nature, or which have aroused significant public interest on valid planning grounds;
 - ~~3. applications which have aroused significant public interest on valid planning grounds;~~
 - ~~3~~4. applications for which~~where~~ an objection from a statutory consultee (as set out in the The Town and Country Planning (Development Management Procedure) (England) Order 2015) is received on valid planning grounds and ~~he/she~~the ~~DeputyAssistant Director ~~Technical Services~~Planning and Economic Development~~ is inclined to approve the application;
 - ~~5. the approval of applications subject to a parish council objection on valid planning grounds or the refusal of applications which have received a representation in support from a Parish Council;~~
 - ~~4~~6. applications subject to a request by an objector to address the Planning Committee and that objection is based on valid planning grounds;
 - ~~5~~7. applications subject to a request by a ~~a the local ward~~ member on valid planning grounds to have the matter determined by the Planning Committee.

Valid planning grounds excludes objections made on any of the following grounds:

- Devaluation of property;
- Loss of view;
- Effect on trade/commercial competition;
- Effect on private or civil rights;

- Personal or financial circumstances or the character of the applicant;
- Third party interest; or
- Matters covered by other legislation or controls including Building Regulations and licensing.

Valid planning grounds include:

- Overlooking / loss of privacy;
- Loss of light or overshadowing;
- Parking;
- Highway safety;
- Traffic;
- Noise;
- Effect on listed building and conservation area;
- Layout and density of building;
- Design, appearance and materials;
- Government policy;
- Disabled persons' access;
- Proposals in the Development Plan;
- Previous planning decisions (including appeal decisions);
- Nature conservation.

Proposals for amendments to Paragraph 13 of the Code of Planning Conduct and Practice. The current wording is set out at pages 308 to 310 of the Constitution

13. Public Hearings at Planning Committee

- 1) Many Local Planning Authorities permit members of the public to address the Committee about a particular proposal prior to the consideration of the application. Procedures vary across the country but all are designed to provide as fair an opportunity as possible for a balance of views to be provided between those supporting and those opposing an application.
- 2) Members of the public are permitted to address the Planning Committee and the following protocols relate to the procedures adopted:
- 3) Protocols:
 - a) In accordance with the Council Procedure Rules, any person (including Members, Parish representatives, applicants, objectors and supporters) may seek to address the Planning Committee by making representations, responding to questions from the Chair in accordance with 4.j) below ~~answering questions~~ or giving evidence at a meeting, in relation to any matter which appears on the agenda for that meeting.
 - b) Any person who wishes to address the committee should request to do so in writing to the Deputy Chief Executive by no later than midday one clear working day before the day of the meeting (that is not counting the day of the meeting or the day notice is given - so for a meeting on a Thursday, notice must be given by no later than midday on the preceding Tuesday).
 - c) In addition to the above provisions, on receipt, within the time frame given, of a material objection to a planning application the objector will be advised by the case officer, in acknowledging receipt of the objection, of the opportunity to address committee when the application is determined. They will be supplied with a form which they can return if they want to avail themselves of that opportunity. The request should be made promptly and in any event within ten days of the day the form referred to above is sent to the objector. A request under this paragraph (which is not withdrawn) will trigger the requirement that an application be determined by the Planning Committee rather than by the Planning Services Development Manager under his delegated

authority. However, if at any time it is decided to exercise delegated authority to determine the application in accordance with the objection, the application will be determined by the Planning Services Development Manager, rather than by the Planning Committee, and there will be no opportunity to address the committee.

- d) The participation of any Member or member of the public will in all cases be at the discretion of the Chairman of the Committee. Ordinarily approval will be granted, but on occasion the Chairman may refuse the request on the grounds mentioned in the Council Procedure Rules. A request will generally be refused if the representation does not relate to material planning considerations.
 - e) If a presentation from an objector is agreed the opportunity will also be given for the applicant to respond.
 - f) If a hearing is agreed the case officer will liaise with the person making the request and the applicant to set up the arrangement. Details of the procedure on the day will be sent to each party appearing. In the event that two or more requests are received from the public to make a presentation about a particular proposal, efforts will be made to reduce this to one person. Equally the applicant will be expected to be represented by one person. In the event of disagreement the Committee will ordinarily hear no more than two representations, which will usually be limited to the two parties living nearest to the application site. In respect of major applications generating significant public interest, the Chairman will give consideration to allowing more parties to speak.
 - g) On the day of the Committee, hearings will take place as the item arises on the agenda unless altered by the Chairman.
- 4) The following procedure will apply:
- a) The Planning Officer will briefly outline what the proposal is about;
 - b) Any person making representations objecting to the grant of permission or seeking the imposition of conditions will address the Committee for up to five minutes ~~from the area of the top table~~. In the event that two representations are made these will each be for a maximum of 2.5 minutes;

~~c) Members may then ask questions to clarify any points that have been made;~~

~~cd)~~ Any person making representations in support of the application (other than the applicant or his/her representative) will then address the committee for up to five minutes. As in relation to objectors, up to five minutes shared between supporters will be permitted.

~~e) Members may then ask questions to clarify any points that have been made;~~

~~df)~~ Any Parish representative will then be permitted to address the Committee for up to five minutes;

~~g) Members may again ask questions to clarify any points that have been made~~

~~eh)~~ If a member of the Council (Planning Committee member or not) wishes to advise the Committee of any representation or lobby he or she has received about the application a similar presentation should then be given but in the case of a committee member the presentation should be purely factual and not opinionated;

~~fi)~~ The applicant (or appointed agent or representative) will then be permitted to address the Committee for up to five minutes, again from the area of the top table;

~~j) Members again may then ask questions to clarify any points that have been made;~~

~~gk)~~ Representatives of the public will then be thanked for their contribution by the Chairman and advised that no further contribution will be permitted from them unless a matter is put to a person in accordance with 4 j) below on the proposal as the Committee considers, then decides the application;

~~hl)~~ The Planning Officer will then conclude the presentation on the application picking up on any points from the presentations that might be misleading in a ~~non-material~~non-material manner;

~~im)~~ The opportunity will then be given for the officer to be questioned by the Committee; and

~~i)~~ If a Member of the Committee has a question, that is materially relevant to the determination of the application, where the Officer does not hold the information requested, but ~~the relevant speaker~~ a person who has spoken on the application may do so ~~be able to assist with, then the Chair may use their~~his / her discretion to ask the relevant speaker to ~~answer the question~~provide the information requested if he or she is able to do so.

j) The Committee will then debate the proposals and come to a decision.

k) If, particularly in relation to applications generating major public interest, more persons are permitted to address the committee, no person will be allowed to address the committee for longer than five minutes and the applicant will normally be given the opportunity to address the committee for an equivalent amount of time to that afforded in total to those objecting to the application.