

CABINET - THURSDAY, 12 OCTOBER 2023

Report of the Head of Planning and Growth and the Head of Governance and Human Resources

Lead Members: Executive Member for Planning and Executive Member for Finance, Customer & Support Services, Revenues and Benefits

Part A

CHANGES TO THE CONSTITUTION

Purpose of Report

To propose changes to the Constitution relating to procedures for dealing with planning applications and other planning matters, and to the composition of the Audit Committee.

Recommendations

1. That it be recommended to Council that the changes to the Constitution set out in Appendix A to this report be made with effect from 1st December 2023 and that the Monitoring Officer be given delegated authority to make any further consequential changes that arise elsewhere in the Constitution.
2. That it be recommended to Council that the composition of the Audit Committee, set out in section 12.3 of the Constitution, be changed from one independent person to two independent members of the Audit Committee.

Reasons

1. To implement improvements to procedures for dealing with planning applications and other planning matters following an independent service review.
2. To enable the authority to meet the best practice set down by CIPFA the constitution of the authority needs to be amended to enable the committee to appoint two co-opted independent members.

Policy Justification and Previous Decisions

The Council's Corporate Strategy sets out that the Council will continue to seek to improve services for customers and run the Council more efficiently. The ability to provide a more efficient planning service will also support the delivery of the Corporate Strategy's objective to support and foster strong economic growth in Charnwood.

CIPFA have updated their Position Statement to promote best practice and provide clear guidance for local authorities to maximise the effectiveness of their Audit Committees. The guidance is not legislative but CIPFA expects that all local

government bodies should make their best efforts to adopt the principles, aiming for effective audit committee arrangements.

The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The Constitution is reviewed regularly to ensure that it continues to fulfil those purposes.

Implementation Timetable including Future Decisions

It is proposed that the changes to the Constitution affecting the procedures for dealing with planning applications and other planning matters should be implemented from 1st December 2023.

The process for the recruitment of an additional independent member to the Audit Committee will commence once Council have approved the change to the constitution at its meeting on 6th November 2023.

There is an annual process for reviewing the Constitution and the next scheduled review is scheduled for 22nd April 2023.

Report Implications

Financial Implications

There are no direct financial implications arising from this report. Co-opted independent members do not receive an allowance but are entitled to claim for reasonable travelling and subsistence expenses in undertaking their role. The rationale behind the changes to the procedures for dealing with planning applications and other planning matters is to improve efficiency.

Risk Management

There are no specific risks associated with this decision.

Equality and Diversity

None identified.

Climate Change and Carbon Impact

None identified.

Crime and Disorder

None identified.

Wards Affected

All Wards.

Publicity Arrangements

Not applicable.

Consultations

Not applicable.

Links to the Corporate Strategy

Caring for the Environment	No
Healthy Communities	No
A Thriving Economy	Yes
Your Council	Yes

Key Decision: No

Background Papers: Report by Planning Officers Society Enterprises:
Charnwood Borough Council – Review of
Democratic Interface (June 2023)
POSE Review Action Plan - September 2023

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Part B

Review of Development Management Processes

1. The Development Management team within the Planning and Growth Service is continually looking to make improvements that produce efficiencies and benefits for customers. This is particularly important given the high volume of work in the service and the recruitment and retention issues that have affected the service in recent times. Most recently this process of review was initiated by the Council's Customer Experience Team linked to the implementation of a new back office IT system. While that review was unable to identify any improvements that could be implemented at that time, it did conclude that there could be potential for business efficiencies in the interface between development management processes, councillors and the Plans Committee. Planning Officers Society Enterprises (POSe) were, therefore, commissioned in February 2023 to undertake an independent review of the way in which elected members are currently engaged in the decision-making process and to consider this in the light of national best practice and the Council's desire to find efficiencies.
2. A particular context for the review was the Government's proposals to change the performance management regime for handling planning applications. Current performance is better than average but very heavily reliant on Extensions of Time, the use of which would be restricted in the Government's proposals.
3. POSe used a comprehensive method that involved interviews with officers and councillors, review of decisions, analysis of performance at the Council and elsewhere and observation of a Plans Committee meeting and the briefings and site visits that took place prior to it. The review "found a Service working towards improvement, and many well-motivated and competent officers committed to providing a good service to the public. The staff and members generally enjoyed good working relationships but there were improvements which could be made which would improve the service to the customer without impinging on the democratic involvement." In particular, the review identified that the "procedures for member call-ins of both applications and enforcement cases involved overly protracted and bureaucratic procedures which the Review Team recommend could be revised to improve both efficiency and effectiveness without losing member involvement."

Recommendations, Action Plan and Consultation

4. The report presented 14 recommendations, the first of which was that officers prepare an action plan, in consultation with officers and councillors, to implement the improvements that had been identified.
5. A number of the recommendations relate to operational matters and these are in the process of being implemented by officers. These relate to:
 - Improving performance monitoring so that the most appropriate indicators are measured and reported to the relevant individuals and groups, including to the Plans Committee. And to ensure that a new

monitoring framework is created for 2024/25 that reflects the incoming statutory indicator set when this is announced

- Reviewing the workload and job descriptions of senior officers so that it involves an appropriate balance of managerial and operational responsibilities.
- Improving the efficiency of the processes for validating and registering planning applications.
- Introducing a process and targets for reducing the reliance on Extensions of Time to reduce the length of time to determine planning applications
- Using templates to improve the efficiency and consistency of reports for items determined under delegated powers to officers.
- Identifying the key issues affecting the recruitment and retention of permanent staff within the service.
- The consideration of alternative venues for the Plans Committee and/or provide for live webcasting of meetings
- Improve the protocol for site visits and consideration of drone footage to illustrate sites
- The issue of customer satisfaction surveys

6. The action plan identifies that some of the improvements require amendments to the Constitution to bring them into effect. These have been the subject of discussion with councillors through member briefings on 26th July and 7th September. These proposed changes are explained in the following section of the report.

7. Some of the recommendations in the POSE report are not proposed to be taken forward following their review by officers and discussion with councillors. One of the recommendations was that the current arrangements for objections to Tree Preservation Orders being considered by the Appeals and Reviews Committee were unusual and should be reviewed and the function being added to the responsibilities of the Plans Committee should be considered. Following consultation with officers and councillors it was concluded that the current arrangements are satisfactory and that no change is required. A further suggested change was to place a time limit on the length of Plans Committee meetings to bring them into line with other council meetings. This is dealt with under section 12.11 of the constitution which restricts all other committees to 2.5 hours unless members vote for an extension of up to 30 minutes to conclude an item of business. Officers and members considered that applying this approach to Plans Committee raised significant risks to decision making given statutory performance indicators required decisions to be made in 8 or 13 weeks. It was felt no change should be made and that agenda length could be managed by inter alia:

- Revisions to, and clearer guidance on, 'call in' arrangements
- Reduction in time for public speaking and officer presentations
- Greater emphasis on committee process in Plans Training sessions

Proposed Changes to the Constitution

8. The changes to the constitution that are proposed, following the review of the POSe recommendations, are discussed below. Members are referred to the full POSe report for a more detailed explanation of the issues that led to the recommendations. The consequential amendments to the wording of the constitution are shown tracked in Appendix A. The appendix is structured in the following way showing tracked changes to:
- I Plans Committee Procedures
 - II Delegation of Council Functions to the Head of Planning and Growth
 - III Planning Code of Good Practice

Revisions to the member 'call in' process for planning applications and when they are required to attend Plans Committee to speak on the item

9. Discussions between the POSe team and ward councillors during the independent review identified dissatisfaction with the current arrangements for 'calling in' planning applications for consideration by the committee. The review team also heard of members' concerns about items being called in to the committee that they felt should remain delegated to officers and ward councillors not attending to speak on the applications they had called in. However, the main concern expressed was that there is insufficient time within the 21 day formal consultation period for ward councillors to establish and understand all stakeholder and residents' views about a proposal especially as it is often the case that comments arrive late in the period and sometimes, after the period has closed. The matter was considered further in discussions with ward councillors at the all member briefing on 7th September. There was a consensus that further time should be given to ward councillors to consider if they wished to call in items to committee. Therefore, it is proposed to extend the period for call in from 21 days to 28 calendar days. This was considered to be right balance to take given the need to ensure that applications should be determined within 8 or 13 weeks. It was felt this change would enable Councillors to reach more informed judgements about calling in applications and was likely to reduce the number of call ins made 'just in case'. There was a strong view amongst the councillors present that councillors calling in applications must attend the committee to explain why they called in the application and the material planning reasons and if they could not attend that they should write to the Chair to explain why they cannot attend and to ask that a written explanation be read to the committee in the ward councillors' speaking slot.

Amendments to clarify the circumstances when councillors in a single member ward may nominate another councillor to call in an application to Plans Committee

10. This issue was raised by councillors to the POSe review team during workshop sessions with members earlier this year. The problem was where a member of the plans committee was also representing a single member ward, if that member wishes to call in an application, they must step away from committee and explain the reasons for the call in in their ward councillor role. The proposal was that in these circumstances the member should be

able to nominate another ward councillor to call in the application to committee so they can maintain their membership of the Plans Committee. A further issue for single member wards was if the councillor had a disclosable interest in the application they are not currently able to nominate another ward councillor to call it in to the plans committee.

11. These issues were given very careful consideration in the 7th September all member briefing session and guidance was provided by the Monitoring Officer. Councillors present considered it was right that members of the committee should step away from the committee having exercised call in rights and that a conflict of interest could not be overcome by nominating another ward councillor to call it in on their behalf. Furthermore, there was a strong view that if a ward councillor in a single member ward is conflicted by a disclosable interest, that conflict is not extinguished if they nominate another ward councillor to call in the application on their behalf. For these reasons no changes are proposed to be made specifically to address these two issues.
12. Further consideration was given by officers to the general issue of single member wards and it is considered there may be circumstances when it is appropriate for ward councillors representing single member wards to have the right to nominate another ward councillor to call in applications on their behalf. These relate to the Mayor, Deputy Mayor or councillors who are ill and it is proposed that the constitution is amended to reflect these circumstances.

Delete the ward referral process for planning enforcement matters

13. The POSe review identified the current scheme of delegation creates an overly bureaucratic process for planning enforcement matters. In cases where it is not considered expedient to take further action lengthy reports are required to explain the case to ward councillors for matters that are often very minor. This takes officers time away from dealing with the more important planning breaches that are causing serious harm. The review team found there were 17 cases over the three years 2020, 2021 and 2022 where serving an enforcement notice was recommended. In only one circumstance, following a ward referral, was a case reported to Committee which then agreed the officer recommendation. In the other 16 cases the ward members accepted the officer recommendation and action proceeded through delegated powers. Over the same period there were 71 cases referred to ward councillors where the officers recommended that it would not be expedient to take action. Again, only 1 case was subsequently referred to Plans Committee for decision and the committee voted not to take action as recommended. The review team concluded there were significant problems with the referral process, inter alia:
 - It created additional workload for staff under existing workload pressures
 - The timescales involved in preparing reports, getting them signed off, seeking ward councillor views and where necessary reporting to committee are lengthy when considered against the timescale for enforcement action that is limited
 - It can result in non-expedient cases not being closed in a timely manner with open cases remaining on file for overly long periods.

- It involves members with no training or experience in planning matters and no planning responsibilities making decisions about technical and legal planning issues
 - No other English local authority has a similar process of ward referral.
14. With these issues in mind officers sought the views of councillors on the recommendation to remove the ward referral process and instead to give delegation to officers to determine enforcement matters at the two all member briefings in 26 July and 7 September. To support the discussion and to bring greater clarity and confidence to councillors about the proposed approach officers saw the opportunity to amend the Enforcement Plan to introduce a case prioritisation and harm assessment. These amendments are considered elsewhere on this agenda but are intended to support the changes to the constitution making clear to members how cases will be dealt with. The proposals were brought forward over the summer with consultation on the draft plan during August.

Revised the wording of the Presentation Scheme (chapter 25 of the constitution) to make it clear when the pre-application enquiry protocol takes precedence

15. The driver for revising the presentation scheme comes from the POSe recommendation to improve the engagement of members in pre-application enquires so that they have the greatest opportunity to influence the outcome of planning applications. The Presentation Scheme sets out the rules to be followed when third parties wish to engage with members to tell them about their proposals, goods or services. It applies to the whole organisation and not just to third parties who wish to speak to councillors about planning proposals.
16. The Pre-application Enquiry Protocol is a guidance document available on the website¹ that explains the commercial service provided by the Planning Service to promoters and developers of land before they submit a formal planning application. The guidance makes it clear there are advantages in engaging with elected representatives and community groups as part of pre-application discussions and that officers will facilitate discussions as appropriate so that development proposals can be better informed. Problems sometimes present themselves when developers and promoters seek to engage directly with councillors outside of the pre-application enquiry process (thus triggering a referral to the Monitoring Officer) or where developers/promoters are aware of the Presentation scheme and contact the Monitoring Officer directly requesting a meeting with members. In these circumstances it is considered the pre-application enquiry protocol should take precedence and that the Presentation Scheme should be amended to reflect that with consequential amendments to the wording of section 8 of the Planning Code of Good Practice.

¹ [Charnwood Borough Council Pre-Application Advice Service](#)

Amendments to the rules around public speaking at committee

17. The POSe review team attended Plans Committee on 12th April 2023 and observed the procedures around public speaking. They also reviewed our public speaking protocol and website advice. They were impressed by the arrangements in place to manage speakers on the night but were mindful that the Council provided 5 minutes for each speaker type to have their say and that the process to register speakers could be improved.
18. In terms of the timescale for public speaking, the current provisions are that 5 minutes is allocated to all five speaker types² on the night. The review team felt that this was excessive and out of step with national best practice which was 3 minutes. They noted the extreme case where, with officer presentations limited to 10 minutes and if there were speakers in each of the five categories, each item on the agenda could take upwards of 35 minutes to introduce before the debate actually commenced. With agendas often including 4-5 items that was around 2-2.5 hours of time before debate and this was adding to the workload and stretching the endurance of members. The review team recommended reducing the speaking time for eligible participants at the meeting to 3 minutes and guiding the planning officers to present the key facts in less than ten minutes per item.
19. The matter was discussed at the all member briefing on 26th July and it was largely felt by councillors present that the 5 minute slot should remain in the interests of democracy. However, in this instance, officers' advice is that the time slot should be reduced to align with national best practice of 3 minutes per speaker, as per POSe's recommendation. Together with shorter officer presentations, this will reduce the time taken to deal with each agenda item and make for more expeditious meetings. Councillors are reminded that all the information to determine planning applications is held on the public planning file, in the committee report (and extras report) and that the speaking slot is intended only to provide elaboration of the information already received.
20. The POSe review team felt that the registration process for speakers should be reviewed as they considered the 7 working day notice that is required in advance of the meeting, set out in the current process, was too long. Instead, they suggested this should be changed to 3 working days as this would give participants chance to digest the plans committee reports that are published 5 working days before the meeting and consider if they need to speak or not. That might avoid people registering to speak only to withdraw that request later (and therefore generating work for officers). Officers have given this careful consideration and are not proposing to make any changes to the current process at this time. This is for two reasons. Firstly, the back office system is currently unable to reliably automate this process and secondly, while it is bureaucratic, the process does work in that participants that have registered must confirm their request to speak not less than 2 working days before the meeting. The existing approach therefore provides more time for participants to consider whether to proceed with their speaking request than the POSe recommendation. It also provides officers with time to coordinate and administer what can sometimes be a significant volume of potential

² Speaker types are: 1) agent/applicant; 2) Ward Councillor; 3) Parish/Town Council; 4) objector; 5) Supporter

speakers. The service will, however, keep the process under review to take advantage of opportunities to improve it that are afforded by the new back office system when it is implemented.

21. The following further changes are proposed as a consequence of reviewing the constitution:

Amendments to give authority to the Head of Planning and Growth to enter into S106 legal agreements on applications not reported to the Plans Committee (section 21 of the constitution)

22. The use of legal agreements is currently delegated to the Head of Planning and Growth on a case by case basis by the Plans Committee. This proposed amendment would clarify the arrangements for applications being determined using delegated authority and enable the Head of Planning and Growth to exercise that authority to determine applications that would otherwise fall to him to determine if they did not require a unilateral undertaking or agreement under a S106 of the Planning Act. This proposed change will help to reduce the burden on the Plans Committee by ensuring the most significant applications fall to their consideration.

Addition to the Meeting Procedures to set out the arrangements for late items

23. The decision taker is legally obliged to consider all material planning issues right up to the point the vote by members of the committee is taken. The use of an 'Extras Report' to pick up late items submitted by participants after the agenda has been published has long been a feature of Plans committee and planning meetings nationally to deal with this issue. The arrangements for the Extras Report and its deadlines for publication have not however been documented and it is proposed they are added to the meeting procedures under section 12:12 of the constitution.

To give delegated authority to the Head of Planning and Growth to make decisions on planning applications where they have not been signed by a specified (or agreed) date

24. This is a proposal to add in a new provision to the constitution with the intent of speeding up the issuing of planning permission following a resolution by the plans committee (or the Head of planning and Growth under delegated powers – see 6 above) to conditionally grant planning permission. There have been circumstances where planning applications have remained on the books for months after the committee decision with no progress on the drafting of the s106 agreement because the developer has abandoned the process or for other reasons. With the government having laid secondary legislation to reduce the timescale for the 'planning guarantee' from 26 to 16 weeks, after which a refund of planning fees can be requested, it is important that the planning authority has tools available to it to help manage its position. In such circumstances the Head of Planning and Growth may resolve to refuse planning permission on the grounds necessary infrastructure cannot be secured by legal agreement.

Clarification that spouses or partners of serving members of the Council or officers will also trigger referral of applications to the Plans Committee

25. This final amendment seeks to bring greater transparency to decision making where spouses or partners of serving member or council officers make planning applications.

Changes to the Membership of the Audit Committee

26. The CIPFA updated Position Statement recommends that “audit committees of local authorities should include co-opted independent members in accordance with the appropriate legislation. Where there is no legislative direction to include co-opted independent members, CIPFA recommends that each authority audit committee should include at least two co-opted independent members to provide appropriate technical expertise”. There is no legislative direction for Borough Councils.
27. To enable the authority to meet the best practice set down by CIPFA the constitution of the authority needs to be amended to enable the committee to appoint two co-opted independent members.
28. This proposal was supported by the Audit Committee at their meeting on 19th September 2023.
29. The additional independent member, who will only receive reimbursement for any travelling expenses, will be recruited following a process as agreed by the Audit Committee, and their appointment will be subject to confirmation by full Council.

Appendices

Appendix A: Proposed changes to the Constitution