

REPORT TO AUDIT & GOVERNANCE

Date of Meeting: 17 April 2025

REPORT TO COUNCIL

Date of Meeting: 10 June 2025

Report of: Simon Copper, Monitoring Officer

Title: Constitutional Changes – City Development Functions and Responsibilities

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 This report proposes changes to the Council's constitution. These changes update, consolidate and streamline the committee and officer level decision-making process, enforcement practices and governance arrangements in relation to City Development.

1.2 These changes have come about due to a number of officer and member led discussions about improving and streamlining the decision-making process in City Development.

1.3 At the Audit and Governance Committee's last meeting of 19 March 2025, it resolved to form a Governance Sounding Board to consider these draft proposals in detail in advance of a report being prepared for this meeting.

1.4 When the Governance Sounding Board met it was supportive of these proposals. The Sounding Board's feedback helped shape the planning committee proposals relating to speaking times of registered speakers and subsequent follow up questions. Feedback also helped add clarity to the revised scheme of delegation for how members can request matters to come to delegation briefing.

2. Recommendations:

2.1 That the Audit and Governance Committee recommends to Council that it gives delegated authority to the Monitoring Officer in consultation with the Lord Mayor to agree a date for the Council to adopt the following changes to the Constitution:

2.1.1 Standing Order 19A to be amended to adjust the speaking order at Planning Committee so that Councillors and members of the public speak first on any planning application before the officer presentation;

2.1.2 Standing Order 44 be amended to limit speaking time for Councillors who are not members of the Planning Committee to five minutes when addressing any planning application (and that any follow-up questions posed by the committee to those Councillors also be limited to five minutes);

2.1.3 Standing Order 19A to be further amended to increase the amount of time for which a member of the public who ask to speak in respect of any planning application from three to five minutes (and that any follow-up questions posed by the committee to the member of the public is limited to five minutes);

- 2.1.4 City Development to update and publish the Planning Committee Debate and Decision Process flowchart to reflect the changes to the speaking order at Planning Committee meetings;
- 2.1.5 replace the Local Planning Code of Conduct with the Members Planning Code of Good Practice;
- 2.1.6 adopt the Site Visit Protocol;
- 2.1.7 update the terms of reference to the Planning Committee in the constitution to accommodate minor adjustments such as clarity on how staff applications are dealt with; and
- 2.1.8 update the scheme of delegation relating to the functions and responsibility of the Head of City Development to reflect updates and accommodate minor clarifications.

3. Reasons for the recommendation:

Issue	Solution
At present, members of the public and councillors address the committee immediately prior to the debate on the proposed application. These comments often drive the discussion on an application, rather than the contents of the officer's report.	Adjust Standing Order 19A so that the agenda in the planning committee is as follows: Councillors, members of the public, the officer presentation and then debate. This will allow officer presentations to address issues raised and shape the discussion on an application by members.
Members speaking under Standing Order 44 have spent in the past up to 1 hour addressing the committee. This takes up valuable time in committee and focus on key points is lost.	Adjust Standing Order 44 so that members may speak on an item and their contributions are limited to five minutes. The salient and pertinent points can be made to the committee in that time. It is proposed to increase the time for members of the public to speak on an application from three to five minutes. This allows for the different stakeholders to have an equal say on applications. This will require a further change to Standing Order 19A.
The current unrestricted format for questions for councillors speaking under Standing Order 44 and members of the public often prolongs proceedings and can devolve into unproductive discussions, hindering effective decision-making.	Any questions posed by the committee to Councillors and members of the public will be limited to five minutes per speaker.
A flowchart showing the planning committee decision making process was prepared recently. If the changes to the order of speakers in the Planning Committee meetings are adopted, it will need to be updated.	Publish an updated flowchart.
The current Local Planning Code has not been revised for some time, and it is not specifically aimed at or helpful to members. It is now a bit dated following	Replace the Planning Code of Conduct with the recently published Members Planning Code of Good Practice. Lawyers in Local Government published a 'Members Planning Code of Good

recent updates to industry standard guidance and best practice.	Practice' and is aimed at and gives practical advice to members on their duties and obligations.
There is no protocol or arrangements in place for requesting, undertaking or organising site visits undertaken by Planning Committee. This often leads to confusion between officers and members as to when it can be requested or how it can be arranged.	Adopt the Site Visit Protocol.
The terms of reference for the Planning Committee needs to be updated to reflect the contents of the Members Planning Code of Good Practice and requires some other minor changes for clarification.	Make changes to Part 3 of the Constitution to reflect the changes.
<p>The Scheme of Delegation is deficient in that:</p> <ul style="list-style-type: none"> (i) Late requests are being made by members to bring the matter to a Delegation Briefing causing delays to decisions; (ii) Unnecessary items are being presented at Delegation Briefings taking up officer and member time; (iii) adopts a heavy-handed approach to staff applications in that all have to be taken to committee and thereby causing delays; (iv) the limit on the amount contained within planning obligations that the Head of City Development can agree with the agreement of the chair of the Planning Committee is too low and may not be workable for Biodiversity Net Gain requirements; (v) Requires some points of clarification around the delegation of enforcement powers. (vi) Is otherwise difficult to read and could be more helpful to officers and members of the public. 	<p>Amend the scheme of delegation so that Delegation Briefing only consider matters which:</p> <ul style="list-style-type: none"> (i) members have promptly notified officers about (within two working after the formal consultation period ends); (ii) raise material planning considerations; (iii) allows uncontroversial applications from members of staff to be determined under delegated powers rather than always having to be taken to Planning Committee; <p>Further changes include:</p> <ul style="list-style-type: none"> (iv) Removing Tree Preservation Orders from the purview of delegation briefing; (v) increasing the amount that the Head of City Development can authorise for planning obligations; (vi) clarifying that the Head of City Development can authorise low level enforcement action against alleged breaches of planning control; and (vii) making it more user-friendly.

4. What are the resource implications including non financial resources

4.1 There are no significant direct financial implications arising from the proposed constitutional changes. However, there are resource implications in terms of officer time required to implement the changes, including updating documentation, communicating changes to members and staff as well as ensuring any relevant training and support is provided.

5. Section 151 Officer comments:

There are no financial implications for Council to consider.

6. What are the legal aspects?

6.1 The changes proposed relate to the Council's Constitution and are within the powers of the authority to amend in accordance with the Local Government Act 2000 and associated guidance. The amendments aim to enhance governance, transparency and the clarity of constitutional procedures. Legal Services have been involved in drafting the changes to ensure they comply with relevant legislation, statutory guidance and best practice. Full Council approval will be required to formally adopt the revised constitutional provisions.

7. Monitoring Officer's comments:

7.1 The Monitoring Officer supports the proposed changes. These changes are intended to clarify current practices, address procedural inefficiencies and ensure compliance with statutory obligations. They reflect recommendations made through both officer review and member feedback.

8. Report details:

Planning Committee

8.1 At present, members of the public and councillors address the committee immediately prior to the debate on the proposed application. These comments are often emotive and can introduce elements into the debate which are not material planning considerations. These comments can sometimes drive the discussion on an application, rather than the contents of the officer's report and the relevant considerations pertaining to the matter at hand. It is proposed that public comments are made at the beginning of the meeting.

Members speaking under Standing Order 44 also address the committee immediately prior to the debate and have spent in the past up to one hour addressing the committee. This takes up valuable time in committee. It is proposed that the speaking time for members speaking under Standing Order 44 (i.e. who are not part of the committee and have registered to speak to an application being considered) is limited to five minutes. The salient and pertinent points can be made to the committee within five minutes. Time limiting contributions from councillors is a practice followed in neighbouring authorities (Mid Devon District Council for example).

It is proposed that members of the public registered to speak have their time increased from three to five minutes. This provides a little more time for them to share their views as it has been often quite difficult to condense this into three minutes. Increasing the time to five minutes would also equalise the time with councillors speaking on an application and allow for the different stakeholders to be equally heard.

It is proposed to limit the time for the committee to ask questions of the speakers to five minutes. There is at present no time limit on this and a 'questions and answers segment' significantly prolongs the proceedings. This part of the meeting can often devolve into an unproductive conversation between the member and the committee. This is not conducive to a healthy decision-making process.

The proposed changes to the Standing Orders would improve the current situation in several key ways:

- By allowing the officer presentation to follow the contributions from councillors and members of the public, the officers can directly address any issues or concerns raised. This helps ensure that the debate is driven by relevant, material planning considerations rather than emotive or irrelevant ones.
- Limiting the speaking time for councillors speaking under Standing Order 44 to five minutes, in line with the time allowed for public comments, helps maintain focus in the meeting and ensures time is used more efficiently. A more efficient process can enhance public perception of the committee's professionalism and fairness.
- Standardising the speaking time for councillors and members of the public to five minutes ensures fairness and equality in how different stakeholders present their views. It will also prevent potential misuse of speaking opportunities and keep the focus on the material issues as well as the development's impact on those most directly involved and affected.
- Limiting the time for follow-up questions to five minutes for each speaker will ensure that the questions are relevant but still be enough time for participants to have felt heard by the committee.

In summary, the proposed changes would create a more efficient, balanced and focused planning committee process. It would ensure that discussions are driven by material considerations and informed by officer advice.

The markup of the amended Standing Order 19A and 44 to bring these changes are attached at **Appendix 1**.

The revised Planning Committee Debate and Decision Process reflecting the new running order for Planning Committee is attached at **Appendix 2**.

Members' Planning Code of Conduct

The Council currently uses a bespoke Members' Planning Code of Conduct. It addresses both member and officer issues and has not been reviewed for some time. It could be more helpful for members dealing with planning issues.

Lawyers in Local Government ("LLG") - the professional membership body representing, promoting and supporting the interests of local government legal or governance officers working within a local authority - has revised the Members Planning Code of Good Practice 10 years following its last revision. The Members' Planning Code of Good Practice was originally published in 2003 in response to a series of successful court challenges concerning local planning authorities and members' conduct or conflicts of interest.

The model code has been an invaluable resource for local government lawyers and councillors alike, receiving endorsement by the Supreme Court in the matter of Dover District Council (Appellant) v CPRE Kent (Respondent) [2017] UKSC 79.

Adopting the model Planning Code of Good Practice would help in the following ways:

- It would provide a Local Planning Code that has been reviewed and endorsed by various local government bodies, ensuring that the Council's procedures and practices align with current best practices.
- It would ensure that our Local Planning Code reflects recent legal rulings and legislative changes, including the Localism Act 2011 and subsequent court decisions, which helps mitigate risks of legal challenges.

- The code offers clear guidance on the conduct expected from both members and officers, addressing potential conflicts of interest, bias, and predetermination. This clarity helps prevent misunderstandings and ensures that all parties are aware of their responsibilities and the correct procedures to follow.
- It provides detailed advice on handling various aspects of the planning process, including site visits, lobbying, and public speaking, which can help members navigate complex situations with confidence.

In summary, adopting the Model Planning Code of Good Practice would provide the Council with a robust, up-to-date framework for managing planning decisions, enhancing legal compliance, transparency and the overall quality of decision-making. It would foster greater public trust and ensure that planning processes are conducted fairly and effectively.

The proposed Members Planning Code of Good Practice is attached at **Appendix 3**.

Site Visits Protocol

A protocol for site visits would complement the Planning Code of Good Practice. It will provide helpful guidance to officers and members on how they can be requested, organised and conducted.

In particular the proposed protocol:

- minimises unnecessary delays by setting clear guidelines on when and how site visits should be requested and organised.
- defines the roles of the Chair, planning officers and members during site visits, ensuring that everyone understands their responsibilities and the purpose of the visit.
- advises members on how to avoid lobbying, debate and discussions about the merits of the application during the visit, ensuring that site visits remain objective fact-finding missions.
- includes provisions for identifying and mitigating health and safety risks during site visits.
- Requires detailed documentation of the visit for future reference including the timetable, attendees and observed features.

The Site Visit Protocol is consistent with the principles contained in the site visit section of the Planning Advisory Service's Probity in Planning.

The proposed Site Visits Protocol is attached at **Appendix 4**.

Terms of Reference of Planning Committee and the Scheme of Delegation

Delegation Briefing

Late requests are being received by officers to bring matters to Delegation Briefing causing delays. Furthermore, often trivial and unnecessary items are being presented at those meetings taking up officer and member time.

It is proposed to amend the scheme of delegation so that Delegation Briefings consider matters amongst other things which:

- Members have promptly notified officers about (i.e. within two working days after the formal consultation period ends).

- Raise material planning considerations.
- Officers are minded to approve (rather than refuse) under delegated powers.

This streamlines the briefing process ensuring that only relevant matters are discussed.

Member of Staff Applications

The current approach requires all staff applications to be taken to committee causing delays for straightforward householder applications. It is proposed to allow minor uncontroversial employee applications to be determined under delegated powers (subject to consultation at Delegation Briefing) rather than always having to be taken to Planning Committee. The terms of reference for the planning committee have also been updated to reflect this.

This would free up Planning Committee time to concentrate on the more important or contentious applications and improves efficiency.

The changes align with the Planning Advisory Service's Probity in Planning, which suggests that any local guidance should have protocols in place in relation to "proposals submitted by councillors and planning officers" (emphasis added) (at chapter 6).

Planning Obligations

The Head of City Development has delegated authority (with agreement of the Chair of the Planning Committee) to enter into minor planning obligation (otherwise known as section 106) agreements to enter a legally binding agreement with a landowner as part of the granting of a planning permission. This will often enable payments for infrastructure to be made and secure other on-site related obligations that require monitoring throughout the lifetime of the development. The definition however of a 'minor' agreement is too restrictive. The current limit of £10,000 is too low and may not be workable for future Biodiversity Net Gain requirements.

It is proposed to increase the amount that the Head of City Development can (with agreement of the Chair of the Planning Committee) authorise for new section 106 agreements securing minor infrastructure and/or involving sums of less than £100,000. This would provide greater flexibility and efficiency in handling planning obligations and will ensure that future requirements, such as Biodiversity Net Gain, can be met without unnecessary delays without the need for an application going to planning committee.

Enforcement Action

The current scheme of delegation lacks clarity about the delegated powers that the Head of City Development has in respect of low-level enforcement. A revised scheme of delegation would clarify that the Head of City Development can authorise low-level enforcement action against alleged breaches of planning control such as requesting more information about the nature of the alleged breaches (by serving [Planning Contravention Notices](#) or the recently introduced [Enforcement Warning Notices](#)) and details as to the ownership of the land. These steps are important pre-cursors to taking formal enforcement action and need to be done quickly and easily. More formal enforcement action will still need to be agreed with the Head of Legal Services as per the current scheme of delegation.

A revised scheme of delegation would ensure that minor breaches can be promptly addressed improving overall compliance. Furthermore, it would reduce ambiguity about those low-level enforcement powers thereby improving the efficiency of enforcement action.

Revocation

It may be necessary in certain circumstances to revoke a planning permission, lawful development certificate or Hazardous Waste consent. The scheme of delegation makes clear that this power is delegated to the Head of City Development, but only where compensation is not payable by the City Council. This would be in most cases where planning permission is revoked (and may therefore never in practice be used), but not payable for instances where information was withheld and subsequently came to light after a certificate of lawfulness was issued and where a hazardous waste consent order is no longer required.

The proposed revised scheme of delegation is attached at **Appendix 5**. The existing scheme of delegation is attached at **Appendix 6**.

The proposed revised terms of reference for the Planning Committee are attached at **Appendix 7**. A comparison of the terms of reference is attached at **Appendix 8**.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 The proposed changes contribute to the Corporate Plan by supporting the priority of being a Well-run Council. By improving governance arrangements for City Development decision-making, the changes promote greater transparency, efficiency and clarity in the Council's operations. The revisions also reflect a commitment to continuous improvement, which underpins the Council's broader vision for governance excellence.

10. What risks are there and how can they be reduced?

10.1 The key risks associated with these changes include potential confusion during the transition to the revised governance framework and delays in implementation. These risks can be mitigated by ensuring communication of the changes to Members and officers, providing training and support as well as monitoring of any implementation process.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because: because

11.4.1 The proposed changes relate solely to internal governance and procedural matters concerning City Development decision-making and do not directly affect public services or access to services.

11.4.2 The revisions aim to improve clarity, transparency, and efficiency in decision-making, supporting inclusive participation by ensuring all Members have a clear understanding of their roles and responsibilities.

12. Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13.1 The Audit and Governance Committee could choose to retain the existing constitutional provisions; however, this would miss the opportunity to improve clarity, transparency and efficiency in the Council's decision-making processes. The proposed changes reflect best practice and ensure the Constitution remains fit for purpose.

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report: -

None

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