

Central
Bedfordshire
Council
Priory House
Monks Walk
Chicksands,
Shefford SG17 5TQ



TO ALL MEMBERS OF THE GENERAL PURPOSES COMMITTEE

13 January 2014

Dear Councillor

**GENERAL PURPOSES COMMITTEE – PROPOSED CONSTITUTIONAL CHANGES RE.
PLANNING MATTERS**

Further to the agenda and papers for the meeting of the General Purposes Committee on 20 January 2014, previously circulated, please find attached the following report which was marked to follow:-

8. Proposed Amendments to the Constitution - Planning Matters

To consider proposed amendments to the Constitution relating to the Development Management Committee.

Should you have any queries regarding the above please contact me.

Yours sincerely

Leslie Manning
Committee Services Officer

email: leslie.manning@centralbedfordshire.gov.uk
telephone: 0300 300 5132

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Meeting: General Purposes Committee

Date: 20 January 2014

Subject: Proposed Amendments to the Constitution – Planning Matters

Report of: Cllr Matthews, Chairman of Development Management Committee

Summary: The report proposes the introduction of a more efficient and focused approach by the Development Management Committee, involving some changes to its current composition, procedures and approach to reaching decisions.

Advising Officer: Melanie Clay, Monitoring Officer

Contact Officer: Mel Peaston, Committee Services Manager

Public/Exempt: Public

Wards Affected: All

Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

The action proposed in this report will address the following Council priority:

- Enhancing Central Bedfordshire – creating jobs, managing growth, protecting our countryside and enabling businesses to grow.

Financial:

1. The report includes a proposal to hold site visits for (normally) every item on the Development Management Committee agenda, with every member of the Committee attending.
2. Currently Members use their own cars to attend site visits. Only those who are insured specifically for the purpose should offer lifts to colleagues so car-sharing is not always an option. Members are able to claim the costs of transport for all the site visits they attend, through the Members' Allowances budget (although Members do not claim for transport when their journey is within their own ward). Although the costs would vary depending on the number and location of site visits, they could amount to £250 – £400 if they used their own cars, while the cost of an appropriately sized coach is approximately £225 per day. Using a coach may therefore represent a more cost effective approach.

3. External training would be met through the existing Members' Development budget.

Legal:

4. The proposed new approach set out in the report requires some changes to the Constitution which are neither minor, nor providing updates, nor correcting errors. (Part A5 paragraph 2.3) The Committee's recommendations to amend the Constitution will therefore need to be referred to full Council on 30 January 2014, to ensure that any necessary amendments are agreed in advance of the Council's annual meeting on 1 May 2014 when the membership of the Development Management Committee will be determined for the year ahead.

Risk Management:

5. Members of the Development Management Committee must be equipped to take planning decisions through appropriate training. A lack of training could lead to decisions which may be subject to judicial review. Judicial review has significant reputational, resource and cost implications. Furthermore, site visits should ensure that the full Committee membership understands the implications of all planning applications, and enable meetings to focus on material planning matters.

Staffing (including Trades Unions):

6. Not Applicable.

Equalities/Human Rights:

7. To ensure that any decision does not unfairly discriminate, public authorities must be rigorous in reporting to Members the outcome of an equality impact assessment and the legal duties.
8. Public Authorities must ensure that decisions are made in a way which minimises unfairness, and without a disproportionately negative effect on people from different ethnic groups, disabled people, women and men. It is important that Councillors are aware of this duty before they take a decision.
9. It is therefore important that the Development Management Committee undertakes appropriate training in relation to development management decisions, on a regular basis.

Public Health

10. There are no implications for public health in the proposals set out in the report.

Community Safety:

11. Undertaking site visits using a coach increases the safety of members of the Committee, by enabling all the Members to arrive and be briefed together at sites where surfaces are uneven or where there are other hazards; and enables the coherent management of any adverse reaction by applicants or members of the public.

Sustainability:

12. Using a small coach for site visits, instead of a range of vehicles driven by individual Members, reduces carbon use whilst enabling a clear and informed understanding of site issues by all members of the Committee. Additionally, training may better equip Members to assess the sustainability of planning applications; and with sustainable development being at the heart of national and local planning policy, this is important.

Procurement:

13. The procurement of external training for members and substitute members of the Development Management Committee should be carried out in accordance with the Council's proper procedures.

RECOMMENDATIONS:

The Committee is asked to agree:

1. that site visits should normally be held for all planning applications to be determined by the Development Management Committee, unless otherwise agreed by the Chairman or Vice-Chairman;
2. that all members and nominated substitute members of the Development Management Committee should attend site visits;
3. that the number of members on the Development Management Committee should be reduced from 18 to 13, with effect from the beginning of the 2014/15 municipal year;
4. to note that the Constitution requires the call-in of planning applications for determination by the Committee through use of a proforma, stating a valid planning reason, and that this will be enforced from the beginning of the 2014/15 municipal year;
5. that all Development Management Committee members and substitute members will be expected to undertake annual accredited training by an external trainer, starting in 2014/15;
6. that any planning applications submitted by senior officers of the Council (Heads of Service, Assistant Directors, Directors, and the Chief Executive) will routinely be determined by the Development Management Committee, however minor, and not through an officer's delegated powers.

The Committee is asked to RECOMMEND TO COUNCIL:

that amendments be made to the Constitution at Parts E2, H3 and the Ethical Handbook as set out in Appendices A, B and C attached, to give effect to the recommendations listed above.

Focus of Development Management Committee

14. This report sets out proposals to increase the focus and business-like approach of the Development Management Committee to taking planning decisions. The proposals include:
 - ensuring that Committee members not only receive training from Council officers prior to participating in taking decisions on the Committee, but also undergo annual, external accredited training to ensure a full understanding of the national and local context of planning considerations together with issues and procedures
 - ensuring that the full Committee membership understands the implications of all applications to be considered at a meeting, by holding site visits for all the planning applications on the agenda. These site visits should be attended by all the Committee members.

Site Visits

15. It is important that the whole Committee is fully involved in all the decisions that it takes. Previously, a site visit was the exception for most applications rather than the rule, and the number of Committee members attending site visits was restricted to five or six (the Chairman and Vice Chairman, 3 other members of the committee, plus the representative/s of the ward where the site is located).
16. It has become evident that discussion at Development Management Committee meetings on a matter which has been the subject of a site visit has been more focused on material planning matters. Furthermore, although photographs and plans displayed at the meeting are very helpful, seeing the actual building and proposals in context can lead to a clearer understanding of the key planning issues.
17. In view of these factors it is proposed that every application to be considered by the Committee should involve a site visit unless the Chairman or Vice-Chairman's agrees otherwise; and that all members of the Committee should attend all site visits.
18. This would enable focused debate at the Committee meeting on the material planning matters which would demonstrate a commitment by all of the Committee to determine each application on its merits.
19. If agreed, it will be necessary to amend the Council's constitution to reflect this change of approach, and the Committee would be required to make recommendations accordingly to full Council.

Numbers

20. A focused, streamlined approach informed by site visits for every planning application, attended by every member of the Committee, calls for a smaller Committee to work together in a more focused and cohesive manner. Site visits would be made using a coach rather than using the current system of individual cars and drivers. This would enable briefing on the coach about the issues and matters which should be inspected at the site visit and ensure that all Committee members had the opportunity to evaluate the proposals for themselves. There would continue to be a requirement that no debate on the merits of the applications was undertaken at the site visit.
21. Where a ward Member not on the Committee is to attend a site visit in their patch but not the other site visits, they would be welcome to do so and may attend on the coach or use their own car for the purpose.
22. Commitment from all members of the Committee will be key to improving the cohesive approach and this will require time spent both at the Committee meetings and on preparing for and attending site visits on a routine basis, amounting to at least 2 full days per month.
23. Research shows that the number of members on the planning committees of other unitary authorities tends to be lower than is currently the case at this Council, with the data set out in **Appendix D** attached. Reducing the number of members of the Development Management Committee to thirteen would enable a more cohesive, focused approach with the whole committee committed to being fully informed through attendance at all site visits.
24. Non-Committee members are encouraged, as now, to attend and speak at meetings when applications affecting their ward are considered.
25. Changing the number of Members on the Development Management Committee would require amending the Constitution by agreement of Council, and a recommendation is included above for this purpose.

Call-in of planning applications

26. Currently the Constitution provides opportunity for planning applications which would normally be decided by the appropriate officer to be called-in by a Committee member for determination by the Committee.
27. Although the Constitution requires that call-in is made on a proforma document, stating the planning reason why the matter should be determined by the Committee, custom and practice has been that requests have been e-mailed or made verbally to the Planning Officer, without necessarily stating a valid planning reason. This is sometimes in response to a Town or Parish Council concern where no valid planning reason has been mentioned.
28. Members will be reminded through the Members' Bulletin, and also by email with a proforma attachment, that all requests to call-in a planning application for Committee determination should be made using the proforma document, as stated in the Constitution, and from the start of the 2014/15 municipal year requests will only be processed if they are received on the proforma.

Training

29. All members of the Development Management Committee are required to attend a training session in advance of taking any decisions at their first Committee meeting. Seminars and workshops have also been provided from time to time for Committee members but these have not always been well attended. Members who are taking decisions on planning matters should remain abreast of changes to planning legislation and the national and local context.
30. It is important that Members are fully conversant with emerging issues as a lack of knowledge could represent a risk to the Council with judicial review of a planning decision remaining a possibility. Judicial review has a very significant resource implication.
31. It is therefore being recommended that all Members and substitutes on Development Management Committee will be expected to attend accredited training provided by an external trainer, on an annual basis.

Planning Applications from Members and Officers

32. Currently the Constitution provides that all planning applications submitted by members or officers of the Council will be determined by the Committee and not through officer delegated powers (Part H3 4.4.97.3). This takes no account of the extent of the application nor of the role or seniority of the officer.
33. In the interests of promoting transparency and appropriate use of resources it is suggested that all applications from elected members of the Council, and from senior officers of the Council (ie Heads of Service, Assistant Directors, Directors, and the Chief Executive), should be determined by the full Committee and not through the delegated powers of the Assistant Director of Planning. Where the Assistant Director of Planning considers that it is appropriate for any applications from other officers, for example any officer involved in the planning process, to be referred to the Committee for determination, he will do so. This will include applications from officers where an objection is received.

Amendments to the Constitution

34. The proposals set out above would require some amendments to the Constitution to be effected. They are detailed below and set out in the appendices attached.
 - (a) Part E2 Committee Terms of Reference (see **Appendix A**)
35. Part E2 paragraph 1 sets out the terms of reference for the Development Management Committee. The number of members should be amended from 18 to 13.
 - (b) Part H3 Scheme of Delegation to Directors and Other Officers (see **Appendix B**)
36. An amendment is needed to provide that planning applications submitted by senior officers of the Council will be determined by the Committee and not through officer delegated powers.

37. (c) Ethical Handbook (see **Appendix C**)

A number of changes should be made to reflect:

- the organisation of site visits
- the requirement for annual training
- Code of Practice for Site Inspections – how site inspections will be carried out and who may attend

Conclusion and Next Steps

38. Further to consideration by General Purposes Committee of the package of measures as set out in the report, and subject to its agreement, recommendations will be made to Council on 30 January to enable the Constitution to be amended.

Appendices:

Appendix A – Proposed amendment to Part E2 of the Constitution

Appendix B – Proposed amendment to Part H3 of the Constitution

Appendix C– Proposed amendments to the Ethical Handbook, contained within the Constitution

Appendix D – Size of Planning Committees in unitary authorities

Background Papers: (open to public inspection) None

Note – Background documents are those which have been used to prepare the report, which are not already published and which are open to public inspection.

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Appendix A

E2 COMMITTEE TERMS OF REFERENCE

1. The Development Management Committee

Appointed by:	The Council under Section 101 of the Local Government Act 1972
No of Members:	18 <u>13</u>
Chairman and Vice-Chairman appointed by:	The Council
Quorum	At least 50% of the membership of the Committee
Frequency	Four weekly or as otherwise determined by the Monitoring Officer in consultation with the Chairman
Venue	Chicksands or as otherwise determined by the Monitoring Officer in consultation with the Chairman
Co-opted Members	None
Code:	The Planning Code of Good Practice

1.1 Terms of Reference

To exercise the following functions of the Council (as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto and detailed in Annex A below), which are not delegated to officers in Part H3 of the Constitution:-

1.1.1 Planning and Conservation

To exercise all powers relating to town and country planning and development control functions.

1.1.2 Commons Registration

The registration of common land or town and village greens and of the variation of rights of common and powers of enforcement, protecting unclaimed registered common land, and to institute proceedings for offences in respect of unclaimed common land.

1.1.3 Highways Use and Regulation and Public Rights of Way

The exercise of powers relating to the regulation of the use of highways and relating to public rights of way.

1.1.4 Trees and Hedgerows and other miscellaneous functions

The exercise of powers relating to the preservation of trees and the protection of important hedgerows and other miscellaneous functions.

1.2 Limitation of Powers

1.2.1 The Committee has full delegated powers on behalf of the Council.

Appendix B

SCHEME OF DELEGATION BY THE COUNCIL AND BY THE EXECUTIVE TO DIRECTORS AND OTHER OFFICERS

Development Management

4.4.19	To carry out the functions of the Council as the Waste and Minerals Planning Authority.	None
4.4.20	To enforce provisions under Town and Country Planning Regulations in respect of minerals and waste management matters.	None
4.4.21	To determine applications required under the Planning Acts and Statutory Instruments; and other planning matters (including applications for planning permission made under Regulation 3 of the Town and Country Planning General Regulations 1992), except where:-	As shown in 4.4.97.1 to 4.4.97.5
4.4.21.1	A ward member of the Council requests in writing, on an agreed pro-forma and supported by the planning reason(s), within 3 weeks of the application being registered, for it to be referred to a meeting of the Development Management Committee. The Member making a call-in is required to set out the planning reasons for the call-in on the proforma and speak about the reasons for the call-in at the Committee where the application may be considered ¹ ;	None

¹ A Member may withdraw a request by notifying the Assistant Director, Planning no later than six clear working days before the date of the Committee meeting.

- 4.4.21.2 It is proposed to grant None
planning permission for a
major development² and:-
- 4.4.21.2.1 a material None
planning
representation(s)
has been
received in
writing from
Town and Parish
Councils which
has not been
resolved by the
Local Planning
Authority
through
negotiation with
the applicant
and/or through
the imposition of
conditions; or
- 4.4.21.2.2 the application None
or matter is
considered to be
a departure from
the Development
Plan; or
- 4.4.21.3 The application (or matter) is None
made by or on behalf of, or
involves in any capacity, any
Member or senior officers of
the Council (ie Head of
Service, Assistant Director,
Director or the Chief
Executive);
- 4.4.21.4 The Assistant Director, None
Planning considers it prudent
to refer the application or
matter to the Development
Management Committee; or
- 4.4.21.5 the application is made
under Regulation 3 of the
Town and Country Planning
(General) Regulations 1992
or is for development on the
Council's own land and in
either case a material

planning representation(s) has been received in writing that is contrary to the Officer delegated decision otherwise to be made and in the case of objections these cannot be resolved through the imposition of conditions.

4.4.21.6 The application is made under Regulation 4 of the Town and Country Planning (General) Regulations 1992.

² The definition of “major development” shall be that used by the Department for Communities and Local Government in the General Development Control Return

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Appendix C

Central Bedfordshire Council Ethical Handbook

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Part 2: Members' Planning Code of Good Practice

1. Site Visits

The advice contained in this section has particular relevance to members of the planning authority who are or may be involved in determining an application for planning permission.

10.1 It is often desirable before determining a planning application that members of the planning authority visit an application site to view it in its surroundings and have relevant features drawn to their attention. The Council has adopted a Code of Practice for such inspections with which it will comply. This is attached at Appendix "A" to this Code. Debate and decisions on applications must take place in a committee meeting, therefore any discussion that does take place during these site visits should not lead into a debate on the merits of the application.

10.2 Remember

10.2.1 **Do not** request a site visit if you have a disclosable pecuniary interest in the matter. For the avoidance of doubt the principles in paragraph 4 of this Planning Code of Good Practice shall apply.

10.2.2 **Do not** attend a site visit where you have a disclosable pecuniary interest in the site or the matter in hand.

~~10.2.3 **Do not** request a site visit unless you feel it is strictly necessary and consider that:-~~

~~10.2.3.1 particular site factors are significant to the determination of the application; or~~

~~10.2.3.2 there are significant policy or precedent implications and specific site factors need to be carefully addressed; and~~

~~10.2.3.3 the factors which justify a site visit have been provided to the Planning Officer with the site visit request.~~

10.2.4 **Do** attend site visits organised by the Council, where possible, where you ~~are an appointed member of the site visit team, or the ward/local Member for the area where the site is.~~ plan to attend the Development Management Committee meeting considering the application.

- ~~10.2.5 Do ensure that any information which you gained from the site visit is reported back to the planning authority, so that all Members have the same information.~~
- 10.2.6 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 10.2.7 **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 10.2.8 **Do not** hear representations from any other party with the exception of the ward/local Member(s) whose comments must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- 10.2.9 **Do not** express opinions or views to anyone.
- 10.2.10 **Do not** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:-
 - 10.2.10.1 you feel it is essential for you to visit the site other than through attending the official site visit; and
 - 10.2.10.2 you have first spoken to the Assistant Director of Planning about your intention to do so and why (which will be recorded on the file); and
 - 10.2.10.3 you can ensure you will comply with these good practice rules on site visits.

2. Training

- 14.1 ~~**Do not**~~ **Unless you have** participate in attended a mandatory training session on decision making at meetings dealing with planning matters if you have not attended the mandatory planning training as prescribed by the Council, you will not be permitted to participate in Development Management Committee decision-taking.

- 14.2 ~~Do endeavour to~~**You are expected to** attend ~~any~~ other specialised training sessions provided, **at least once during the course of a municipal year,** since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and Local Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 14.3 **You should**~~Do~~ participate in the annual review of a sample of planning decisions to ensure that Members' judgement has been based on proper planning considerations.

APPENDIX A

Code of Practice for Conduct of Site Inspections

1. A site inspection will ~~only~~ be carried out ~~in the circumstances set out below: for all planning applications to be determined by the Development Management Committee, unless agreed otherwise by the Chairman or Vice Chairman.~~

(a) Prior to Consideration by Committee

~~Any member of the Council may request that an item contained in the draft index of applications to be considered at the next meeting of the Development Management committee, should be the subject of a site inspection prior to that meeting.~~

~~Such requests must be submitted to the Assistant Director of Planning by the date and time specified in the draft index, together with the factors which justify a site visit.~~

~~The Assistant Director of Planning will notify the chairman of the Committee of the request. The request may be refused if the Assistant Director of Planning, following consultation with the chairman, does not consider that a site inspection is justified in respect of the application.~~

A Member with a disclosable pecuniary interest in the site or the matter in hand should not request a site visit. Do not try to represent ward/local views, but ask another ward/local member to do so instead. Always act in accordance with paragraph 10 of the Planning Code of Good Practice.

(b) Following Consideration at Committee

~~Where the Development Management Committee wishes to address site specific issues, it may determine to hold a site inspection, the purpose of which will be to familiarise members with the site.~~

- ~~12.~~ 12. A Member with a disclosable pecuniary interest in the site or the matter in hand must not attend the site visit.
- ~~23.~~ 23. No lobbying or debate on issues relating to determination of the application shall take place during the site visit (any such discussion could be regarded as prejudicial to the committee's decision on the matter).

- ~~34.~~ The timing and arrangements for the conduct of site inspections shall be agreed by the Monitoring Officer and the Assistant Director of Planning, in consultation with the chairman of the Committee. Site visits will normally be undertaken from public vantage points and the land and premises the subject of the application. Only in exceptional circumstances will the visit take place on private third party land. If it is considered exceptional circumstances exist the site visit request must include a specific reference to the third party land and the reasons why it is necessary to visit that land.
5. ~~The number of Members to conduct site inspections will normally be limited to:-~~ All members and nominated substitutes who will attend the relevant Development Management Committee meeting should attend all site visits. The representative(s) of the ward in which the site is located may also attend.
- 5.1 ~~The chairman and vice-chairman of the Committee or their nominees; plus~~
- 5.2 ~~No more than three other members of the Committee; plus~~
- 5.3 ~~The representative(s) of the ward in which the site is located.~~
6. ~~Where necessary and, after consultation with the chairman or vice-chairman, the Monitoring Officer shall be authorised to appoint substitute Members to conduct the site inspections.~~
47. Members of the Development Management Committee ~~conduct~~undertaking the site inspection are encouraged to share transport wherever possible, as long as drivers who provide shared transport hold adequate insurance cover.
58. (a) No person other than officers of the Council, or invited representatives of consultee bodies, shall accompany Members during an inspection;
- (b) If a person with an interest in land to be inspected or his/her representative accompanies ~~M~~members to enable access or ensure safety, no lobbying or discussion with that person will be permitted.
9. ~~Provision will be made in the committee agenda to enable the separate consideration of any matter which has been the subject of a site inspection.~~

Appendix D

Numbers on development management and planning committees at unitary authorities

Authority	Number on Council	Number on planning committee
Bath and North East Somerset	65	12
Bracknell Forest	42	19
Halton	56	13
Isle of Wight	40	12
Medway	55	16
North East Lincolnshire	42	11
North Lincolnshire	43	10
Telford and Wrekin	54	9
Wokingham	54	9
Cheshire East	72	14 - Strategic Planning Board 14 - Planning Committee North 15 – Planning Committee South
Chester West and Chester	75	9 – Strategic Planning Committee 11 – Planning Committee

Near Neighbours

Bedford	41	9
Luton	47	10
Milton Keynes	51	10

South Northamptonshire	42	12
South Cambridgeshire	57	13
North Herts	49	14
Dacorum	51	12

Note 1: The list above does not include Metropolitan Boroughs or County Councils, some of which are unitary authorities.

Note 2: The average number of members of a unitary authority is 52 with the average number of Members on the Development Management/Planning Committee being 12. Applying those averages to Central Bedfordshire Council, with 59 Councillors, would indicate a Development Management Committee of 13 members.