



**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE COUNCIL**

**WEDNESDAY 25TH OCTOBER 2023, AT 6.00 P.M.**

**PARKSIDE SUITE - PARKSIDE**

**SUPPLEMENTARY DOCUMENTATION 1**

11. **Recommendations from the Constitution Review Working Group** (Pages 3 - 52)

Due to the length of the full Constitution Review Working Group report, the full length report is included in this separate supplementary pack. This pack can be accessed electronically on the Council's website and a small number of paper copies will be available on request.

S. Hanley  
Acting Chief Executive

Parkside  
Market Street  
BROMSGROVE  
Worcestershire  
B61 8DA

17th October 2023

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### Recommendations from the Constitution Review Working Group

Relevant Portfolio Holder		Councillor Charlie Hotham
Portfolio Holder Consulted		
Relevant Head of Service		Claire Felton, Head of Legal, Democratic and Property Services
Report Author Claire Felton	Job Title: Head of Legal, Democratic and Property Services Contact email: <a href="mailto:c.felton@bromsgroveandredditch.gov.uk">c.felton@bromsgroveandredditch.gov.uk</a>	
Wards Affected		All
Ward Councillor(s) consulted		N/A
Relevant Strategic Purpose(s)		An Effective and Sustainable Council
Non-Key Decision		
If you have any questions about this report, please contact the report author in advance of the meeting.		

#### 1. RECOMMENDATIONS

**Council is asked to RESOLVE that:-**

- 1) Meetings of the Planning Committee should be live streamed;**
- 2) White nameplates should be used at meetings of the Planning Committee for Councillors;**
- 3) The Chairman should introduce all the officers present at the start of Planning Committee meetings;**
- 4) A review should be carried out of the content of officer reports to ensure that they are proportionate to the size and complexity of the proposal being determined;**
- 5) Members of the Planning Committee should continue to be offered the choice to either access agenda packs for meetings electronically or in paper form;**
- 6) A greater number of spare copies of the supplementary packs containing the update reports should be made available for the consideration of the public at meetings of the Planning Committee, with clarification provided to the public that copies will be made available on a first come first served basis to residents attending meetings in person;**

- 7) Where possible, members of the Planning Committee should provide Officers with prior notice of any technical questions relating to applications on the agenda;
- 8) Refresher training should be provided on the roles and responsibilities of Planning Committee members;
- 9) Appeal decisions and planning application performance should be reported to and discussed by the Planning Committee;
- 10) the Code of Practice – Planning Services, at Part 25 of the Constitution, be amended to require all Members to leave the room when they have spoken as a Ward Councillor on a Planning Matter, draft wording of the amendments proposed is contained within Appendix 1. These amendments should be incorporated into the Constitution for ratification at Full Council;
- 11) the quorum for meetings of the Audit, Standards and Governance Committee should be reduced to 3 Members;
- 12) the content of the Policy Framework be updated as detailed in Appendix 5 to the report;
- 13) the Chief Executive be delegated authority, as Proper Officer, to declare the office of Councillor vacant immediately after a person has ceased to be a Councillor where they have not attended a Council or Committee meeting for six months or more; and
- 14) the Council should undertake a trial allowing Members to ask supplementary questions at Council meetings during consideration of Questions on Notice.

## **2. BACKGROUND**

- 2.1 Meetings of the Constitution Review Working Group took place on Thursday 26<sup>th</sup> January, Thursday 31<sup>st</sup> August 2023 and Thursday 28<sup>th</sup> September 2023.
- 2.2 During these meetings, a range of issues were discussed by Members of the group and a number of recommendations were agreed which have implications for the content of the Council's constitution as well as arrangements for both Council and Planning Committee meetings.

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- 2.3 This report provides further information about the background to each of these recommendations and Council is asked to consider whether to approve the actions proposed.

### **3. OPERATIONAL ISSUES**

#### External Review of the Planning Committee

- 3.1 During the 2022/23 municipal year a review was undertaken by the independent Planning Advisory Service (PAS) of the Council's Planning Committee. The outcomes of this review were recorded in a report alongside nine recommendations that were proposed by PAS and which were designed to improve the operation of the Planning Committee at the Council (Appendix 1).
- 3.2 The Constitution Review Working Group discussed each of the recommendations that had been made by PAS in turn and in doing so considered and agreed the following:
- Live streaming: Members discussed the benefits arising in terms of the transparency of Planning Committee meetings where these meetings could be live streamed. It was noted that group leaders had already requested that Council meetings should be live streamed moving forward. As there tends to be public interest in the items on the agenda for Planning Committee meetings, Members agreed that live streaming of these Committee meetings on a regular basis would be justifiable.
  - White nameplates for Members at Planning Committee meetings: The group noted that Planning Committee meetings are quasi-judicial meetings which should be apolitical. The use of white nameplates for Councillors at meetings of this Committee reflects the apolitical nature of these meetings. Therefore, Members agreed that the proposal to use white nameplates at meetings of the Planning Committee should be agreed.
  - The Chairman introducing Officers present at Planning Committee meetings: Members agreed that where the Chairman introduces the officers present and clarifies their roles, this provides greater transparency in the process. It should be noted that these introductions have already been incorporated into Planning Committee meeting arrangements at Bromsgrove District Council.

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- Review of the content of reports to Planning Committee: The group discussed the content of reports to the Planning Committee and agreed that the proposal from PAS to ensure that the content of reports is commensurate with the size and complexity of the application was sensible. Members raised concerns that at present, the use of a standard format for all reports results in a significant amount of repetition of points between reports which Members suggested was unnecessary.
- Accessing Agenda Packs for Planning Committee Meetings: In their report, PAS had suggested the Council should improve connectivity to facilitate a paperless process. Members of the group had some concerns about this proposal, on the basis that they felt that Councillors should be able to choose whether to opt to receive paper copies of agenda packs or to access these electronically. The group did note that Members can access agenda packs electronically using the modern.gov app and training can be provided by Democratic Services to Members in respect of how to use the app.
- Availability of Update Reports and Supplementary Packs at Planning Committee Meetings: The PAS report proposed that the update report should be made available to everybody present at the meeting. The group noted that, in addition to already providing all interested parties with electronic access to these packs on the Council's website, spare paper copies of this pack are always made available for members of the public to access at the meeting. Unfortunately, it is not possible to predict in advance the exact number of members of the public who will attend each meeting, as this varies. Therefore, the group agreed that, in addition to printing a higher number of update reports for Planning Committee meetings, clarification should be provided in the papers that these would be available in hard copy form on a first come first served basis.
- Prior Notice of Members' Questions at Planning Committee: The PAS report had proposed that Members should provide Officers with 48 hours' notice of questions due to be asked at Planning Committee meetings and during the group meeting it was clarified that this related to questions of a technical nature. Members expressed concerns about this proposal, noting that questions could arise during a debate that had not previously been anticipated and also that this could be viewed as curtailing the democratic process. To assist planning officers, due to the time that could be required to answer questions of a technical nature, the group instead suggested that, where possible, notice should be provided by Members to Planning Officers of any technical questions.

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- Refresher Training on the Roles and Responsibilities of Planning Committee Members: The group noted that comprehensive training had been provided to Members at the start of the 2023/24 municipal year, including refresher training to more experienced Members and there was general agreement that this should continue.
- Reporting Appeal Decisions and Planning Performance to Planning Committee: The group was advised that the outcomes of appeals in respect of decisions taken at meetings of the Planning Committee had implications for the authority's performance in respect of planning matters. In this context, Members agreed that it was important to ensure that Planning Committee Members were kept informed about the outcomes of appeals in respect of their decisions and how this had impacted on the Council's performance.

### Planning Committee – Code of Practice

- 3.3 During the 2022/23 municipal year, issues were raised by Members in terms of Councillor involvement in Planning Committee meetings, in particular when a member of the Planning Committee wishes to speak as a Councillor in respect of an application that affects their Ward.
- 3.4 The issues raised by Members of the Planning Committee in this context have included;
- Having to leave the room prior to the debate and the decision.
  - Having to leave the room prior to public speaking.
  - Being disadvantaged by being on the Planning Committee compared to Councillors who are not a member of the Planning Committee.
- 3.5 The Planning Procedure Rules within the main body of the Council's Constitution (at Part 14) currently do not specifically address any of these issues. However, to date Councillors affected are asked to leave by the Chairman of the Planning Committee and do so in line with good practice, which is an arrangement that has been in place for a number of years.

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- 3.6 Part 25 of the Constitution at paragraph 2.2 broadly states that if a member speaks on a Planning Matter they must remain in the public gallery. Also, in Part 25 in paragraph 2.9 it is stated that *“where a Member has campaigned for or come to a final view prior to a meeting, the member should not take part in the decision making process. Depending on the circumstance and to preserve the appearance of propriety, the member should also consider whether or not to withdraw from the public gallery, after making his or her representations to the planning committee.”*
- 3.7 Guidance is given in the publication ‘Probity in Planning: Advice for Councillors and Officers making planning decisions’ which is published by the Local Government Association (LGA). A relevant extract from page 13 states *“If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision making committee, they would be well advised to withdraw from the meeting once any public or ward member speaking opportunities have been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority’s code of conduct for planning matters.”*
- 3.8 It should be remembered that Planning Committees are quasi-judicial Committees and are subject to appeals to the land Tribunal as well as Judicial Review. That is the basis as to why it is considered best practice for Planning Committee Members to leave the room to prevent any allegations that they influenced any decisions either by their presence or by their conduct.
- 3.9 It is still considered good practice, even when a Councillor insists their presence would not influence any decision. Planning Committee decisions often attract considerable interest both from the applicant and/or the community and it is entirely possible that even if a Councillor does not believe or intend to influence, their actions could be interpreted as such and form part of an appeal, it is also possible that such allegations could be made maliciously. In addition to the potential impact on an appeal, such actions could be the subject of Code of Conduct complaints either in isolation or in addition to any appeals.
- 3.10 During the PAS review of the Planning Committee, Officers were advised that current arrangements are considered good practice and that the majority of Councils exclude members of their Planning Committee from the room during the debate and decision, where they have declared an interest and/or addressed the Committee as an interested party. In addition, Officers have been informed that a significant number of Councils exclude all Councillors from the room during the debate and



decision in those circumstances, whether they are a member of the Planning Committee or not.

- 3.11 In the current context, the Constitution Review Working Group concluded that it would not appear to be a good time to reverse the practice of asking Planning Committee members to leave the room for the debate/decision. However, Members concluded that a reasonable concession would be to allow Councillors that are also members of Planning Committee (and relevant Parish Councillors) to remain in the room during public speaking of the applicant/supporters/objectors.
- 3.12 The group also agreed that another reasonable concession would be that, if a Councillor has been asked to leave the room, they should still be enabled to view the live stream of the meeting. The reasons for excluding Councillors from the debate/decision process is to prevent the appearance of influence, it is not intended to make it difficult for Councillors to report back to residents/interested parties or to prevent them from knowing what was discussed and the reason for any decision without waiting for the minutes to be published.
- 3.13 The final issue is about Councillors on Planning Committee feeling disadvantaged compared to other Councillors. The group concluded that the easiest way to 'level the playing field' would be to have all Councillors that speak on an issue leave the room.
- 3.14 Appendix 2 to this report outlines suggested amendments to the Code of Practice – Planning Services document that reflects these proposed arrangements.

### Audit, Standards and Governance Committee - Quorum

- 3.15 Bromsgrove District Council has a single Audit, Standards and Governance Committee which focuses on making decisions on a combination of audit, governance and standards matters on behalf of the Council.
- 3.16 The Audit, Standards and Governance Committee has a very important role in the Council's corporate governance arrangements and in respect of the standards regime. The Committee is a key source of assurance about the organisation's arrangements for managing risk, maintaining an effective control environment, and reporting on financial and non-financial performance.
- 3.17 In this context, it is really important to ensure that meetings of the Committee take place when scheduled and that all business on the agenda is transacted in a timely manner.

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- 3.18 There are currently 11 members appointed to the Committee, which has a quorum of 5 members. In previous years there was a membership of 9 councillors and a quorum of 5 Councillors. The total membership of the Committee was increased at the start of this municipal year.
- 3.19 In recent years, there have been a limited number of occasions where all members of the Committee have been present, although attendance has improved so far in the 2023/24 municipal year. There have also been times when the meeting has only just been quorate or close to only just being quorate, as detailed in Appendix 3 to the report.
- 3.20 The terms of reference for the Audit, Standards and Governance Committee stipulate that members of the Cabinet and the Chairman of the Council must not be members of, nor act as substitutes at meetings of the Audit, Standards and Governance Committee. Whilst this helps to ensure that appropriate checks and balances are in place in the decision-making process, it does reduce the pool of potential members from which substitute appointments can be made.
- 3.21 To help address this problem, the Constitution Review Working Group is proposing that the quorum for the Committee should be reduced from 5 to 3. This would help to ensure that meetings could proceed without delay, particularly in cases where there may be limited numbers of possible substitutes available to attend meetings of the Committee at short notice.
- 3.22 The size of the quorum for the Audit, Standards and Governance Committee at Bromsgrove District Council is currently higher than the size of the quorum for equivalent Committees at other Councils in Worcestershire, as detailed in Appendix 4 to the report. Therefore, it would not be inappropriate to have a quorum of 3 for the Committee.

### Policy Framework

- 3.23 Bromsgrove District Council has a Leader and Cabinet model of decision making and is working towards a hybrid Leader and Cabinet model following decisions made at the Council meeting held on 20<sup>th</sup> September 2023. Within this structure of decision making, there are some decisions that must be taken by full Council, some decisions that must be taken by the Cabinet, some decisions where there are shared responsibilities and some “local choice” functions, whereby the authority determines whether the decision is taken by Cabinet or Council.
- 3.24 The Council is required to have a policy framework, comprising a list of important policies and strategies. Only full Council can make decisions about policies and strategies included in the Policy Framework.

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- 3.25 A list of items currently included in the Council's Policy Framework can be found at Paragraph 4 in the Articles of the constitution (an extract from which can be found at Appendix 5).
- 3.26 Items that form part of the Policy Framework can only be determined by Council, although will be debated at a prior meeting of Cabinet. This is a lengthier decision-making process than that in place for items that can be determined by the Cabinet alone, or which have been delegated to other Committees, and so can cause delays to implementation. It is therefore important for Members to ensure that the most appropriate items, including those items where there is a legal requirement to do so, are included in the Policy Framework.
- 3.27 The content of the Policy Framework can be reviewed by the Council from time to time to ensure that it remains suitable for the authority. When reviewing the content of the Policy Framework, Members should take into account the legal requirements in respect of responsibilities for functions, as detailed at Part 3 of the Council's constitution.
- 3.28 Members may also wish to take into account the current content of the Policy Frameworks at other local authorities in Worcestershire (Appendix 7).
- 3.29 Suggested changes to the Policy Framework have been highlighted in track changes in Appendix 6 to the report. The suggested changes are being proposed on the basis of the following information:
- Annual Performance Plan – There is no longer an Annual Performance Plan. Instead, the Council's performance is monitored in quarterly finance and performance monitoring reports. These reports are considered by the Cabinet and Finance and Budget Working Group (the latter in respect of the budget). The Constitution Review Working Group has suggested that the Audit, Standards and Governance Committee might be the most appropriate body to monitor the performance data in these reports alongside Cabinet.
  - Crime and Disorder Reduction Plan – Overview and Scrutiny has a statutory duty to scrutinise the work of the local Crime and Disorder Reduction Partnership, which is the North Worcestershire Community Safety Partnership, on an annual basis. The Overview and Scrutiny Board fulfils this role, with the latest such meeting taking place on 8<sup>th</sup> February 2023. It is suggested that the Board could scrutinise the content of the plan as part of this work.

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- Plans and strategies which together form part of the Local Development Framework / Development Plan – The Head of Planning, Regeneration and Leisure Services has reported that the Local Development Framework and Development Plan are essentially the same thing. It is therefore proposed that this should be reflected in the Policy Framework, with reference made to the Development Plan as a single item. Members are asked to note that planning policies require Council approval and cannot be determined by Cabinet alone.
- Carbon Reduction Strategy – Due to the importance of the green thread in the Council Plan, it is suggested that the Carbon Reduction Strategy should be added to the Policy Framework.
- Contract Procedure Rules – Due to the importance of effective Contract Procedure Rules to good governance, it is proposed that this should be added to the Council's Policy Framework. This should help to provide Members with assurance that the Council is complying with best practice.
- Pay Policy – It is proposed that the Pay Policy should be removed from the Policy Framework as it does not need to be listed in the framework. As the Pay Policy forms part of the Council's budget it will continue to be determined by Council.

### Six Month Rule – Declaring a Vacancy

- 3.30 A Councillor ceases to be an elected Member should they fail to attend a meeting of the authority for six consecutive months since their previous attendance at a meeting. This could involve attendance at meetings of Council or Committees.
- 3.31 Currently, at Bromsgrove District Council, should a Councillor fail to attend a Council or Committee meeting in this period, the vacancy can only be declared at a Council meeting. This could potentially cause delays between the person ceasing to be a Member and the vacancy occurring as it is dependent on the date of the next Council meeting.
- 3.32 The Association of Electoral Administrators (AEA) has provided guidance indicating that it is considered best practice for a Council's constitution to provide delegated authority to the proper officer of the Council to declare vacancies that occur in these instances.

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- 3.33 The Constitution Review Working Group is therefore recommending that the Chief Executive, as Proper Officer, be delegated authority to declare vacancies that occur in the event of a Councillor failing to attend a Council or Committee meeting in a six month period.

Supplementary Question at Council Meetings

- 3.34 During the meeting of the Constitution Review Working Group held on 31<sup>st</sup> August 2023 Members discussed arrangements for the consideration of Questions on Notice at Council meetings.
- 3.35 At present, each Member is entitled to submit a single Question on Notice for consideration at a Council meeting. However, supplementary questions are not permitted.
- 3.36 The Constitution Review Working Group made reference to arrangements for consideration of Questions on Notice at other Councils in Worcestershire. At present, a single supplementary question is permitted per Member at Council meetings held at Malvern Hills District Council, Redditch Borough Council, Worcester City Council, Worcestershire County Council and Wyre Forest District Council.
- 3.37 The Constitution Review Working Group agreed that it would be worthwhile to trial the inclusion of supplementary questions at Council meetings held at Bromsgrove District Council. In line with other Councils, this would consist of a single supplementary question per Member and the supplementary question would need to be based on the original question that was asked or the answer provided to that question.
- 3.38 During the Constitution Review Working Group meeting it was noted that there would be occasions where the Member to whom the question is directed would be unable to answer the supplementary question at the meeting. This could be because additional information might be required from partner organisations in order to provide an answer or because specific data might need to be referenced in the response. In such cases, Members were asked to note that responses to supplementary questions might need to be provided to the relevant Member in writing after the meeting.
- 3.39 Currently, there is a limit of 15 minutes at Council meetings dedicated to the consideration of Questions on Notice. Members may wish to give consideration to extending the time period available for the consideration of Questions on Notice during this trial period in order to accommodate the asking and provision of answers to supplementary questions.

Other Issues discussed by the Constitution Review Working Group

3.40 During the meetings of the Constitution Review Working Group held on 26<sup>th</sup> January, 31<sup>st</sup> August and 28<sup>th</sup> September 2023 Members also discussed a number of issues that did not result in recommendations being made to Council. This included consideration of the following points:

- Officer Scheme of Delegations – The Officer Scheme of Delegations is reviewed by Council on an annual basis. When the Scheme of Delegations was reviewed at the Annual Council meeting held in May 2022, a number of questions were raised and suggestions made about certain delegations. These delegations were revisited at the Constitution Review Working Group meeting together with responses that had been received from Officers to the points raised by Members at the Council meeting. Based on this information, the group chose not to recommend any changes in respect of those delegations.
- Government grant funding – The Constitution Review Working Group considered a proposal for the Section 151 Officer be delegated authority to accept, administer and distribute ring fenced Government Grant Funding, or funding from bodies acting on behalf of Government, and to make the necessary and corresponding adjustments to the Medium Term Financial Plan following consultation with the relevant Portfolio Holder and subject to meeting the conditions of grant funding. This would have related to grants that could only be used for specific purposes which were subject to tight deadlines and where there was a risk that the funding would need to be returned to the Government if it was not processed quickly. Members discussed this proposed delegation but did not agree any recommendation. Instead, the group proposed that this matter should be referred to the Finance and Budget Working Group for further discussion.
- The Governance Systems Task Group – At the meeting held on 28<sup>th</sup> September 2023 Members discussed the next steps in the process in terms of the proposals made by the Governance Systems Task Group and approved at the Council meeting held on 20<sup>th</sup> September 2023. Members agreed that there should be regular meeting of the Constitution Review Working Group, held on approximately a monthly basis, to consider progress in respect of these recommendations. It should also be noted that the Overview and Scrutiny Board is due to receive an update on progress at every meeting held during the 2023/24 municipal year.

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#### **4. FINANCIAL IMPLICATIONS**

- 4.1 No specific financial implications have been identified in relation to the recommendations detailed in this report.

#### **5. LEGAL IMPLICATIONS**

- 5.1 Review and revision of the Constitution is governed by Article 15 of the Constitution.
- 5.2 Only Council can make changes to the constitution. The Constitution Review Working Group can review sections of the constitution and make recommendations to Council about changes that could be made to the constitution.

#### Planning Committee

- 5.3 There are no Acts or Regulations that specifically address Planning Committee members speaking as ward Councillors. The general principle in terms of Local Authority Decision Making is addressed in the Localism Act Section 31 (10), which specifically refers to Disclosable Pecuniary Interests and states "*Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate.*"

#### Audit, Standards and Governance Committee

- 5.4 As detailed in the Local Government Act 1972 (Schedule 12, paragraph 6) the legal requirement in terms of the quorum for Council meetings is that at least one quarter of the whole number of members of the Council must be present.
- 5.5 A quorum of 3 would suffice under these rules for a Committee with a total number of 11 seats.
- 5.6 Councils can choose to set the quorum for each Committee at a particular level that the authority deems to be appropriate. This can include setting the quorum for the Committee at a level higher than one third of the members of the Committee.
- 5.7 At Bromsgrove District Council, the quorums for Committees are detailed in the Committee Terms of Reference at Part 5 of the constitution. The quorums for the Committees are also recorded in many of the Committee procedure rules that are included in the constitution.



### Policy Framework

- 5.8 The Local Government Act 2000, in particular Section 13 (Functions which are the responsibility of an executive) details the matters which are the responsibility of the Executive (Cabinet).
- 5.9 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) gives effect to section 13 of the Local Government Act 2000 by specifying in Schedule 1 to the regulations which functions are not to be the responsibility of the Executive (Cabinet). In other words, the Executive cannot by law make the decision on those matters.
- 5.10 The areas that the Executive (Cabinet) cannot determine, so instead are the preserve of full Council, fall under the following headings:
- Functions relating to town and country planning and development control (planning policies)
  - Functions relation to Licensing and Registration (many of which are delegated in Bromsgrove to the relevant regulatory Committees)
  - Functions relating to health and safety at work
  - Functions relating to elections (many of which are delegated to the Electoral Matters Committee)
  - Functions relating to name and status of areas and individuals
  - Power to make, amend, re-enact or enforce byelaws
  - Power to promote or oppose local or personal Bills
  - Functions relating to pensions
  - Miscellaneous functions

### Six Month Rule – Declaring a Vacancy

- 5.11 Section 101 of the Local Government Act 1972 (as amended) gives a general power to local authorities to discharge functions through officers. Local Authorities are required by the same Act to maintain a list of these, which is referred to as the Scheme of Delegation. This sets out those powers of the Council which can be carried out by officers of the Council.
- 5.12 Section 85 of the Local Government Act 1972 states that if a member of a local authority fails, throughout a period of six consecutive months from the date of their last attendance, to attend a meeting of the authority, they shall cease to be a member of the Council. An exception applies if their non-attendance has been approved by Council before the expiry of the six-month period.

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- 5.13 Section 86 of the Local Government Act 1972 states that where a Councillor has ceased to be a Member, the Council will forthwith declare the office to be vacant.
- 5.14 The AEA advises that the requirement for the Council to forthwith declare the office to be vacant places an expectation that this will happen without delay. By delegating authority to the proper officer, any such vacancies can be declared in the timely manner anticipated by the legislation.

### **6. OTHER - IMPLICATIONS**

#### **Relevant Strategic Purpose**

- 6.1 It is appropriate to review the operation of Committees from time to time to ensure that they function in a manner that supports the strategic purpose “an effective and sustainable Council”.
- 6.2 Similarly, it is important to review the Council’s Policy Framework on occasion to ensure that the content remains relevant and supports the Council’s ability to be “an effective and sustainable Council”.
- 6.3 Members need to ensure that meetings of the Audit, Standards and Governance Committee are quorate so that the business on the agenda can be transacted in a timely manner.
- 6.4 Regular review of the Council’s Scheme of Delegations helps Members to determine whether the delegations remain fit for purpose. This supports the strategic purpose to be an Effective and Sustainable Council.

#### **Climate Change Implications**

- 6.5 Currently, the Carbon Reduction Strategy and plans do not form part of the authority’s Policy Framework. Given the significance of the green thread as a priority in the Council Plan, the Constitution Review Working Group is suggesting that the item should be added to the Policy Framework.
- 6.6 Any other changes to the Scheme of Delegations which could have climate change implications would be reviewed on a case by case basis.

#### **Equalities and Diversity Implications**

- 6.7 There are no specific equalities and diversity implications to this report.

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### **7. RISK MANAGEMENT**

- 7.1 There is a risk that if the quorum for the Audit, Standards and Governance Committee remains at 5 Members, there may be meetings of the Committee in future which are not quorate. Should this occur, decisions could not be taken at these meetings, which could undermine the Council's corporate governance processes.

### **8. APPENDICES and BACKGROUND PAPERS**

#### Appendices:

Appendix 1 – Bromsgrove District Council Planning Committee Review – Planning Advisory Service

Appendix 2 – The Code of Practice – Planning Services with suggested amendments (Part 25 of the Constitution)

Appendix 3 – Audit, Standards and Governance Committee – Committee Attendance Figures

Appendix 4 – Quorums for Audit Committees in Worcestershire

Appendix 5 – Extract from the Articles – Current Policy Framework

Appendix 6 – Extract from the Articles – Suggested Amendments to the Policy Framework

Appendix 7 – Policy Frameworks at other Councils in Worcestershire

#### Background Papers:

AEA Guidance – 'Casual Vacancy – Failure to Attend Meetings.'

Bromsgrove District Council's constitution

The Localism Act 2011, paragraph 31: [Localism Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Minutes of the meeting of the Annual Council meeting held on 18<sup>th</sup> May 2022: [Minutes of the Annual Council meeting - 18th May 2022](#)

Probity in Planning: Advice for Councillors and Officers making planning decisions by the Local Government Association.

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Review of Delegations, report to the Annual Council meeting held on 18<sup>th</sup> May 2022: [Scheme of Delegations Review - 18th May 2022](#)  
 Scheme of Delegations, report to the Annual Council meeting held on 24<sup>th</sup> May 2023: [Scheme of Delegations report](#)

**9. REPORT SIGN OFF**

Department	Name and Job Title	Date
Portfolio Holder	Councillor Charlie Hotham	
Lead Director / Head of Service	Claire Felton, Head of Legal, Democratic and Property Services	
Financial Services	Pete Carpenter, Interim Section 151 Officer	
Legal Services	Claire Felton, Head of Legal, Democratic and Property Services	
Policy Team (if equalities implications apply)	Helen Mole, Business Transformation Manager	
Climate Change Team (if climate change implications apply)	Judith Willis, Head of Communities and Housing Services	

## **Bromsgrove District Council**

### **Planning Committee Review**

**March 2023**

#### **1. EXECUTIVE SUMMARY**

1.1 The Planning Advisory Service (PAS) has undertaken a review of the practices, procedures and performance of Bromsgrove District Council's Planning Committee. The reviewer observed Planning Committee meetings held on 5<sup>th</sup> September 2022 and 5<sup>th</sup> December 2022 and has reviewed relevant information, as well as interviewing key officers, Councillors and regular contributors to the Planning committee process.

1.2 From the information available and observation of the two Committees, the meetings appear to be well managed and demonstrate good teamwork from the Committee Chair, Planning Officers and the Democratic Services staff. The 'production' of the meeting is carried out professionally and the Democratic Services staff ensure that the technology and process are working and planned. Officer/Councillor relationships are seen as generally being professional and respectful.

1.3 Those attending the meeting are well supported and are able to contribute to the meeting effectively, although as outlined above an inability to view the meetings remotely is identified as a weakness in the process.

1.4 The lack of recordings of earlier meetings coupled with no major and/or controversial proposals being determined at either meeting attended has meant that it has not been possible to reach conclusions or make recommendations that relate to the quality of debate at the meetings or Councillor's behaviours when faced with potentially difficult decisions.

1.5 The recommendations in this report are designed to help further improve performance.

#### **KEY RECOMMENDATIONS**

**R1 Review options to enable live streaming of all meetings and saving of recordings**

**R2 Replace nameplates to show Councillors names only**

**R3 Chair should introduce officers present at start of each meeting**

**R4 Carry out review of the content of officer reports to ensure that they are proportionate to the size and complexity of the proposal being determined**

**R5 Improve connectivity in the meeting room in order to facilitate a paperless process**

**R6 Make update sheet available to all those present at the meeting**

**R7 Councillors should be reminded of the need to provide 48 hours' notice of questions**

**R8 Provide refresher training on roles and responsibilities of Planning Committee members**

**R9 Appeal decisions and planning application performance should be reported to and discussed by the Planning Committee**

## **2 INTRODUCTION**

2.1 The Planning Advisory Service (PAS) is part of the Local Government Association (LGA) and provides high quality help, advice, support and training on planning and service delivery to councils, primarily in England. Its work follows a 'sector led' improvement approach, whereby local authorities help each other to continuously improve. PAS were invited to undertake a review of the Bromsgrove District Council Planning Committee's practices and performance.

2.2 Section 62A of the Town and Country Planning Act 1990 allows applications for planning permission and reserved matters consent to be made directly to the Secretary of State where the Local Planning Authority for the area has been designated for this purpose. Designations are made by the Secretary of State based upon the quality of decision-making and the speed with which applications are dealt with measured by the proportion of applications that are dealt with within the statutory time or an agreed extended period. Under the quality of decision-making assessment, any authority that has more than ten per cent of either major or non-major applications overturned at appeal over a specified two-year period is at risk of designation. 17.9% of major applications for the period to September 2022 within Bromsgrove have been allowed at appeal, which means that the Council's performance is below the designation threshold.

2.3 Tim Burton was appointed to undertake the review on behalf of PAS. Tim has over 30 years' experience working for local authorities, including most recently as Head of Planning for Taunton Deane and West Somerset Councils. For the last 3 years he has worked with PAS providing a range of support to many local planning authorities, including service reviews, Planning Committee reviews and Member and Officer training.

2.4 The review considered best practice in decision-making based on the PAS Development Management (DM) Challenge Toolkit with particular emphasis on the section on Political leadership. The toolkit aims to provide a 'health check' for Planning Authorities and act as a simple way to develop an action plan for improvements to their Development Management service. The recommendations seek to push high standards in terms of the impact upon the quality of decision making and the customer's experience.

2.5 The scope of the review was agreed with Ruth Bamford (Head of Planning, Regeneration and Leisure Services) and Dale Birch (Development Management Manager).

2.6 This has included viewing the Planning Committees held on Monday 5<sup>th</sup> September 2022 and 5<sup>th</sup> December 2022, together with interviews carried out with key members of the Development Management service and the Council's Democratic Services Officer and Principal Solicitor, as well as with Councillors who sit on the committee. Regular attendees from Parish Councils were also interviewed, as were planning agents. However, as the agendas for recent meetings have been comparatively short, it has given little opportunity to observe representations being made or in-depth debate of planning matters. The report therefore needs to be read in this context.

2.7 All those interviewed were friendly and welcoming and engaged fully with the process and are thanked for providing their honest opinions and feedback.

### **3 PROCESSES AND PROCEDURES**

3.1 Whilst all Committee Members attend the meetings in person, the Council does offer an option whereby others who wish to, can make their representations remotely. This is particularly appreciated by agents who can address the meeting without the need to travel or attend the whole meeting. The Democratic Services Officer ensures that Microsoft Teams is working at the start of each meeting to enable this to happen.

3.2 The Council currently only live streams meetings in circumstances where proposals are being considered that are likely to give rise to very high levels of public interest. The recordings are then deleted following the signing of the minutes. None of the meetings during the period of this review have been live streamed. The reason given for not live streaming all Planning Committees is one of cost as the Committee Room is not set up for broadcasting. However, it is likely that the preference for interacting through digital technology will only increase over time. Therefore, it is recommended that the Council looks to install technology to enable this to happen. If all meetings become live streamed, there would be advantages from retaining the recordings for future reference, rather than deleting them once the minutes are agreed, as is presently the case. Oral recordings of the meetings should be considered as an interim option should live streaming not be able to be implemented in the short term.

3.3 The Democratic Services Officer takes responsibility for the administration of the meeting which allows other officers to focus on their own professional roles. This approach works very successfully and is a demonstration of good practice. The Democratic Services officer meets and greets all members of the public who are scheduled to speak. This puts people who may not otherwise feel comfortable in the formal setting of a Planning Committee meeting at ease. Those regular attendees interviewed did not raise any concerns relating to the administration of the meetings.

3.4 The layout of the Committee Room is conducive to this type of formal meeting, without appearing to be intimidating, which Council Chambers often can be. However, this comment should be caveated as the observer's perception is based solely upon attending a meeting where only a few members of the public attended in person, and only one person dialling in via Microsoft Teams.

3.5 It is helpful that Members of the Committee are supplied with nameplates, although the orientation of Councillors at right angles to the public means that the nameplates may not always be visible. The nameplates are colour coded for each political party. It is unclear why this is the case. The Councillor's role on the Planning Committee should not be as a representative of their party. Identifying the party they represent on their nameplate would seem to run counter to this, and could lead to a perception of political influence or block voting. Whilst there was no evidence found or suggested that this was the case, removal of the colours would reinforce this.

3.6 The Committee Chair introduces the meeting. This introduction was clear and proportionate. However, it would be helpful to observers if the Chair were to introduce the officers in attendance at this point.

## **4 COMPOSITION AND WORKLOAD**

4.1 The Committee currently comprises eleven members. This is considered to be an appropriate size for a Planning Committee and retention of a committee comprised of this number is supported.

4.2 During the interviews, it was explained that in the past that the number of items being referred to the Planning Committee was at times very high, resulting in extremely long meetings. The consensus view from those interviewed was that by taking a more rigorous approach to the consideration of call-in requests, the length of meetings has been reducing and the Committee's workload is now manageable, as is demonstrated by the short agendas in recent months. However, for consistency it is important that planning related reasons are provided with all call-in requests.

## **5 OFFICER REPORTS AND PRESENTATIONS**

5.1 The officer report not only supports Councillors in their decision-making, but it should also demonstrate that a decision has been properly considered, taking into account relevant legislation and policy. The reports viewed were consistently thorough and comprehensive in their analysis of relevant considerations. However, as advised in the DM Challenge toolkit, it is important that officers spend the right length of time writing a report depending on the application it concerns to ensure that resources are deployed proportionately. The Council may wish to review smaller-scale or less contentious cases to assess whether reports can be shortened and/or simplified without impacting on the quality of decision-making.

5.2 Members of the Planning Committee are provided with printed copies of the Agenda papers. It was suggested that these are not shared electronically due to connectivity issues and a preference of councillors. However, it would appear more professional and save cost and waste if the whole Committee process could become paperless.

5.3 Prior to the meeting a written update sheet is provided to members of the Committee. This represents good practice. However, this information is not provided to others attending the meeting, which can at times make it more difficult for them to follow the debate.

5.4 Officer attendance at the meetings is deemed to be appropriate, with legal representation as well as the Development Management Manager attending with relevant case officers. The Head of Planning only attends when the meeting is due to consider proposals of strategic importance. This approach is supported. Transport advice is also available (remotely) as may be required. However, it is agreed that it would not be proportionate to require a Worcestershire County Council officer to attend all meetings. Officers will also liaise with other key consultees to decide whether their attendance at the meeting is required. However, it appears that such attendance is rarely seen as necessary and planning officers provide the advice.

5.5 Whilst only two comparatively short meetings were able to be witnessed by the reviewer, the general consensus amongst those interviewed is that officer presentations are good and the approach whereby case officers present the application, whilst the Development Management Manager (Dale Birch) picks up questions and guides Councillors is effective. However, this does



put a lot of emphasis on Dale Birch to respond to questions. The Council may wish to consider whether the presenting officer takes a more significant role in responding to questions, freeing up Dale Birch to provide only more strategic guidance. Case officers are often in a better position to answer questions of fact as they should know the issues around their caseload in detail, which a more senior officer is less likely to. At present there would appear to be an over-reliance on Dale Birch to advise.

5.6 In the absence of being able to view detailed debate it is not possible to provide a definitive opinion on the quality and robustness of advice provided to the Committee. Whilst Planning agents suggested that both legal and planning officers in attendance might take a stronger approach at times, it was suggested by others that officers provide good support to Councillors and provide consistently sound advice.

## **6 DEBATE AND DECISION-MAKING**

6.1 As only two comparatively short Committee meetings were able to be observed, it would not be appropriate to provide detailed commentary and conclusions on the effectiveness of the Committee in terms of the quality of debate and decision-making.

6.2 In discussions with agents, they expressed frustration around a perceived inability to provide points of clarification on occasions when the presenting officer has not seemed to be adequately prepared or not got the relevant information to hand. This can at times lead to deferments, whereby if the Chair had asked the applicant or agent provide clarification, they feel that the matter could have been resolved.

6.3 Those interviewed were without exception complimentary around the way the meetings are currently chaired. They suggested that the Chair can be firm where required, but always carries out the role in a polite way.

6.4 No concerns were raised around party political influence upon Planning Committee decision-making. However, in the meetings observed, it was noted that each debate tended to be led by a small number of Councillors. It is important that the remaining members of the Committee are fully engaged and encouraged to contribute to debate.

6.5 Whilst it was suggested that Councillors can struggle with resolutions to overturn officer recommendations, the Development Management Manager and solicitor provide good support to ensure that decisions made are sound. It was suggested that an area where such difficulties can occur is around justifying the very special circumstances required to support development in the Green Belt (most notably for care homes).

6.6 The release of strategic sites has clearly been controversial, with concern being raised by Councillors and other interested parties, particularly in relation to transport and highway considerations. A number of those interviewed expressed a view that this had led to a loss of confidence in the Worcestershire County Council advice amongst Committee Members. This then influenced subsequent decisions related to major development. However, the consensus is that this is no longer represents an issue.

6.7 There was a concern raised amongst those third parties interviewed that due weight had not been given to their concerns in relation to applications for major strategic developments. Detailed analysis of individual cases has not been carried out as part of this review. However, in light of

the criticism received, the Council may wish to consider how it intends to foster better relationships with these important stakeholders moving forward.

## **7 OFFICER/COUNCILLOR INTERACTION**

7.1 There is a general perception amongst both officers and Councillors that interaction both at the Committee meeting and elsewhere is generally professional and respectful. Councillors are encouraged to speak to officers as may be required with interaction not limited to the Planning committee forum. This represents good practice and will undoubtedly be a contributory factor to the overall positive approach to enacting the business of the Planning Committee.

7.2 The DM challenge toolkit identifies an excellent service as “one which the Committee has a Chair who works well with officers and in particular the officer lead and legal advisor. There are structured Chair’s briefing session prior to the Committee and the Chair keeps in regular touch with officers on Committee business so there are no surprises at the Committee meeting.” This is an accurate reflection of the procedures and relationships in place at Bromsgrove.

7.3 The way Council’s administer Planning Committee site inspections can vary greatly and if not handled appropriately can lead to issues both of probity and of unnecessary delay. The approach taken at Bromsgrove was described as being ‘pragmatic’ with inspections only taking place in exceptional circumstances and where the officer presentation is not considered sufficient to inform Councillors of the particular site circumstances. No issues were raised around this process in terms of either probity or unnecessary delay.

7.4 To ensure that officers have sufficient time for research in advance of the Planning Committee meeting, it is an established convention set out in the agenda papers that committee members should provide 48 hours’ notice, should they wish to ask a question. This does not appear to happen on all occasions. Councillors should be reminded of this requirement.

7.5 Parish Councils raised a concern around accessibility and responsiveness of planning officers leading to an inability to resolve issues and answer questions prior to applications being referred to the Planning Committee.

## **8 TRAINING AND DEVELOPMENT**

8.1 The DM Challenge toolkit recognises good practice as being one where “All Committee members are trained annually using a set training programme that is delivered by competent people either within or external to the Council.” This is the case at Bromsgrove where there is a good in-house programme supported by refresher training based upon PAS ‘making defensible decisions’ material.

8.2 Notwithstanding this, the reviewer felt that some Councillors interviewed were not fully conversive of how the role of the Committee member was distinct from their Ward Councillor responsibilities. A representative from a Parish Council also raised a concern that at times ward Councillors resisted engagement with them due to fear of predetermination. Whilst no specific evidence was cited, it is recommended that refresher training is undertaken focussing on this particular issue.

8.3 It is important that Councillors revisit their decisions for learning and development. Whilst copies of appeal decisions are sent to Councillors it is recommended that there is a slot on the Committee agenda where appeal decisions are reported and possible learning discussed.

8.4 Performance information is not reported to Planning Committee members and as a result there would appear to be a lack of awareness amongst Councillors that the Council could be at risk of designation. Appreciation that the Council has not been performing well in terms of the quality of its decision-making should be used as an opportunity for review and training. However, by not sharing the issue with Councillors this opportunity has to date been missed.

## **9 OVERALL CONCLUSIONS**

9.1 The organisation and administration of the Committee is undertaken in an efficient and professional manner. Roles and responsibilities are clear and those attending the meeting are provided with excellent support.

9.2 The officer presentations are generally good, and Councillors are provided with necessary support. Notwithstanding this, the presenting officers could take a more active role in responding to issues, with the Development Management Manager providing strategic guidance to the Committee.

9.3 The Committee composition is of an appropriate size and the scheme of delegation as currently administered has sufficient capacity to ensure proportionate length of agendas and is not a block to timely decision-making.

9.4 Relationships between Councillors and officers are seen to be both professional and respectful.

9.5 Councillors are well trained, although refresher training around roles and responsibilities is recommended.

9.6 The lack of live streaming or being able to access recordings is an identified weakness that should be resolved to enhance customer experience. Furthermore, the lack of this facility has made carrying out this review more difficult as it was not possible to view a meeting with detailed debate, which would have enabled the reviewer to provide analysis of the quality and robustness of advice provided to the Committee or of the quality of debate undertaken. Live streaming would not only have enabled a more detailed review of decision-making possible, but is also a wider reflection of the benefits of customers being able to engage with the process of decision-making virtually.

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### CODE OF PRACTICE - PLANNING SERVICES

#### 1. INTRODUCTION

- 1.1 The role of a Member serving on the Planning Committee involves balancing the representation of the needs and interests of individual constituents and the community, with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.
- 1.2 This document has been prepared to guide Members and Officers in dealing with planning matters in a manner consistent with good practice, including the conduct of Members in its processes and procedures and should be read alongside the Councillors' Code of Conduct.
- 1.3 Failure to follow the recommendations set out in this Code of Practice, without good reason, may be regarded as being incompatible with good administration by the Local Government Ombudsman and affect how the Council, its Officers or Members may be perceived by others.
- 1.4 By setting out clearly what is expected of both Members and Officers, it is anticipated that this Code will engender greater mutual understanding and support between all those involved in the planning process. The Code has been produced in the spirit of looking for continuous improvements in the delivery of services, discharging duties responsibly in an open, professional and consistent way compatible with the Councillors' Code of Conduct and its Protocol for Members/Officer relations.
- 1.5 Both Members and Officers dealing with planning matters and advising Committees will be required to observe all the provisions of this Code.
- 1.6 The Code is set out in the form of a series of headings followed by a brief discussion of the issues involved and best practice advice.

#### 2. THE ROLE OF COUNCILLORS

- 2.1 The role of Members is central to the planning system, which operates within a political arena. It is well recognised that planning is not an exact science and, provided that Members are properly briefed by Officers, they are well placed to make decisions.

##### Ward Interests

- 2.2 Members have a special duty to their ward constituents but their overriding responsibility is to the whole community. In terms of the planning process, this can produce a conflict of interest between Members legitimately and effectively giving vent to local, sometimes

individual, concerns and the need to reflect the interests of the wider community in decisions reached on planning merits alone. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members should take account of these views, they should not favour any person, company, group or locality above the wider community interest, nor put themselves in a position where they appear to do so. Members should be mindful of the need to carefully weigh up all of the arguments before deciding what view to take. Where a Member of Planning Committee takes the view that they would wish to speak in relation to an application affecting their ward they may do so as Ward Councillor under the procedure for Public Speaking at Planning Committee. However, they will have to [remain in the public gallery/leave the room](#) after they have spoken and take no part in the debate or vote on the application [\(this applies whether the Member is also a member of Planning Committee or not\)](#).

- 2.3 Members should also be very cautious about accepting gifts and hospitality. Members should abide by the Council's Code of Conduct for Gifts and Hospitality, including recording offers and/or acceptance of these in the register as required.

#### Interests arising from the Code of Conduct

- 2.4 Under the Council's Member Code of Conduct, Members will need to make sure they are clear whether they have a discloseable pecuniary interest or other discloseable interest when involving themselves in planning matters.
- 2.5 Members who are unsure as to whether an interest should be declared should seek the advice of the Council's Monitoring Officer **at an early stage**.

#### Lobbying

- 2.6 It is a fact of public life that Members will be subject to varying degrees of lobbying. This is part of the democratic process. However, when individuals or groups seek to influence the outcome of a planning decision, which should be treated upon its individual planning merits in the wider public interest, the impartiality of the decision may be questioned. Such problems might arise if Members indicate their voting intention or support for a particular cause in advance of all the relevant information and Officer advice. However, section 25 the Localism Act states that a member is not to be regarded as having a closed mind about a decision simply because they have previously expressed a view on it.
- 2.7 When being lobbied, Members should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the likely outcome of a planning application before they have heard all the evidence and arguments. If they do express an opinion, they should make it clear that they will only be in a position to make a final decision when all the facts are known and they have heard

both sides of the argument at Committee. On occasion, the Member may respond to lobbying by deciding to go public in support of a particular outcome, or even campaigning actively for it.

- 2.8 However, Members must not have a closed mind when they make a decision. Decisions taken by those with pre-determined views are vulnerable to successful legal challenge. At the point of making a decision, members must carefully consider all the evidence that is put before them and be prepared to modify or change their initial view in the light of the arguments and evidence presented. Then they must make their final decision at the meeting with an open mind based on all the evidence.
- 2.9 Where a Member has campaigned for or come to a final view prior to a meeting, the member should not take part in the decision making process. ~~Depending on the circumstance and to preserve the appearance of propriety, t~~The member should also ~~consider whether or not to~~ withdraw from the public gallery, after making his or her representations to the planning committee (this applies whether the Member is also a member of Planning Committee or not).
- 2.8 Members should not represent an applicant or individual objector and should not organise support or opposition for a planning application or other planning decision. In particular, they should avoid representing applicants or objectors in discussions with Planning Officers which may take place before an application is considered by the Planning Committee. Instead they should suggest to those who are lobbying, that they should speak or write to the relevant Planning Officer, in order that their opinions can be included in the officer's report to committee. Any letters referred to and relied upon by Councillors in speaking on an application should be given to the Head of Planning and Regeneration to be placed on the respective planning file immediately after the meeting.
- 2.9 Members should not lobby other Members or put pressure on Officers to make a particular recommendation. Therefore no political group meeting must take place prior to the committee meeting to discuss the planning applications.
- 2.10 Members of the Planning Committee need to take account of the general public's expectation that a planning application will be processed and determined in an open and fair manner. There is the possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at, or complain to the Local Government Ombudsman on the grounds of maladministration.

### **3. MEMBERSHIP OF PARISH COUNCILS**

- 3.1 Parish Councils are consulted and asked to comment on planning applications prior to their being considered by the District Council's

Planning Committee. Sometimes, a member of the Planning Committee will also be a member of a Parish Council and such a situation could give rise to a perception that there is a conflict between these two roles.

- 3.2 Members of the Planning Committee may participate in the formulation of their Parish Council's comments on a planning application and may vote on motions put forward in connection with the making of such comments. However, in doing so, they must recognise that they have not yet received full information about the application e.g. the planning history, comments by other consultees and officer recommendation. They should therefore declare, at the Parish Council's meeting, that in assisting in the formulation of the Parish Council's comments, that they are only forming a preliminary view on the application, that they recognise that there is further information about the application which they have not yet received, and that they reserve the right to change their preliminary view, in the light of such further information, when the application is considered by the District Council's Planning Committee.
- 3.3 In this way, members of the Planning Committee, who are also members of Parish Councils, will avoid any perception that they have fettered their judgment on an application before knowing the full facts about it.
- 3.4 Members are advised to let the planning committee know any ward interest, participation in parish council responses to applications or any significant lobbying at the meeting, whether or not they decide that it is appropriate to participate in the debate and determination regarding an application.

#### **4. PLANNING SITE VISITS PROCEDURE**

- 4.1 Members of Planning Committee will have the opportunity to attend site visits for some of the planning applications which are decided by the Planning Committee.
- 4.2 The purpose of site visits is to allow Members to consider the general setting of the application site so that they will be in the best position to decide whether or not planning permission should be granted. In particular Members will be able to:-
  - Observe the geography of the site including the boundaries and its relationship to adjoining properties;
  - Consider the scale and impact of the proposed development in relation to the site;
  - Use the visit to assess whether any planning conditions might need to be considered.
- 4.3 Site visits will not be arranged for sites that have been the subject of a site visit within the preceding 6 months.



- 4.4 The site visit does not constitute a meeting of the Planning Committee. Accordingly, Members should not form a collective view on the issue.
- 4.5 Since Members are attending a site merely to “see what is to be seen”; it is inappropriate to hear from either the applicant or his representative during the site visit. Similarly, it is inappropriate to hear from anybody else who wishes to make representations. This includes the Ward councillor for the area in which the site is located. The occasion is not a local hearing. Members should leave each site with no collective view – the occasion is simply to assist them individually to form a view.
- 4.6 When the application is next considered by the Planning Committee, the Chairman of the Committee should remind Members that the application was the subject of a site visit, and then let the debate proceed normally.

### **5. THE ROLE OF OFFICERS**

- 5.1 Officers, as the paid employees of the Council, have the principal responsibility for carrying out the Council’s work. They should provide professional and impartial advice to Members to assist them in reaching their decisions and to the public at large on all planning matters. It is very important that such advice is consistent with the provisions of the prevailing planning policies and guidance so that the planning system is seen to be fair whatever the outcome.
- 5.2 The Planning Committee has given delegated authority to the Head of Planning and Regeneration to approve certain categories of planning application as set out in the Council’s Scheme of Delegation.
- 5.3 Any decisions delegated to Officers should be clearly minuted.

### **6. OFFICER REPORTS TO COMMITTEE**

- 6.1 All reports shall provide a clear technical appraisal of the application including site location and description, planning history, consultations received and the policy contents for the recommendation, which should be justified in the Officers’ written comments.
- 6.2 Reports should have a written recommendation of action; oral reporting (except to update a report) should be avoided and carefully minuted.
- 6.3 Reports should contain technical appraisals, which clearly justify a recommendation.
- 6.4 If the report’s recommendation is contrary to the provisions of the development plan or Local Development Framework, the material considerations, which justify the departure, must be clearly stated.
- 6.5 Terms for Planning Obligations (Section 106 Agreements) must be clearly set out, discussed openly and recorded in the minutes.

6.6 The Monitoring Officer or his or her representative shall attend all Planning Committee meetings and provide advice, together with legal advice as required.

### **7. PRE-APPLICATION DISCUSSIONS**

7.1 Officers are often asked informally during meetings whether planning permission is required for changes of use and/or for new development.

7.2 Officers will always endeavour to be as helpful as they can in this matter but can only offer an informal opinion as to whether or not planning permission is required for the development someone wishes to undertake, whether it is a new building, an extension to a home, or a change of use of land or building. Any advice that they offer in this respect is an individual opinion based on the information the enquirer has provided at the time. It is not binding on the Council.

7.3 For an official decision, enquirers should be invited to apply for a Certificate of Lawfulness of Proposed Use or Development, under Section 192 of the Town and Country Planning Act 1990. A fee is payable for the processing of such an application but the enquirer will be presented with a legally binding determination, in other words, an official decision of the Council telling him/her whether or not planning permission is required.

7.4 The fee varies according to the type of development proposed and staff will be able to advise on the amount payable. It is in the interests of the enquirer to have an official written determination relating to development should he/she want to sell his/her land/property or should any legal challenge arise relating to the work which has been undertaken.

7.5 The following guidelines have been adopted to ensure that all parties involved are treated fairly and that the Planning Officers' role is clearly understood:

- Planning Officers will give informal advice in the spirit of helpfulness. It is however only informal advice which is not binding on the Local Planning Authority;
- Planning Officers will negotiate and offer advice to overcome problems at application stage where a solution is apparent and the proposal can be determined within the statutory time limit as a consequence;
- The onus to negotiate falls upon the applicant/agent to offer alternatives to the original submission;
- Planning Officers cannot advise what a potential recommendation will be should an application be made.

### **8. DECISIONS CONTRARY TO THE DEVELOPMENT PLAN/ LOCAL DEVELOPMENT FRAMEWORK**

- 8.1 The law requires that where the development plan/Local Development Framework is relevant, decisions should be taken in accordance with it, unless material planning considerations indicate otherwise. Members will receive training and guidance from officers as to what constitutes material planning considerations. In certain situations, legislation requires the Council to notify the relevant Secretary of State before granting permission contrary to the development plan. Officers will advise members if this process is necessary and will carry out the process.

### **9. DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 9.1 Members are perfectly entitled to reach different decisions to those recommended to them by Officers by attaching different weight to the various relevant planning criteria. That this happens from time to time is inevitable but it is essential that the public be left in no doubt as to how the decision was reached. Officer reports must be well structured and the public should not be given the impression that decisions reached contrary to advice are made hastily or new conditions imposed on the spur of the moment. A full detailed minute of the Committee's reasons should be made. The Officer should also be given an opportunity to explain the implications of the contrary decision.
- 9.2 Where a Member is minded to raise new issues, information or questions, they are advised to contact the respective Planning Officer or Head of Planning and Regeneration before the meeting wherever possible.
- 9.3 Where a Member is minded to make a recommendation, which is contrary to the Officer recommendation, then the reasons should be clearly set out, particularly in the case of a refusal and in the case of an approval, the type of conditions proposed should be indicated.
- 9.4 If an imminent decision is thought to be perverse, the Head of Planning and Regeneration or the Monitoring Officer should so advise the Committee, but it remains the role of the Chairman to decide whether or not it would be preferable to defer consideration to allow for a period of reflection on the advice given before proceeding.
- 9.5 Where an application is refused or conditions imposed contrary to an officer recommendation, it may not be in the Council's best interests for the Case Officer to give evidence at any subsequent public inquiry or hearing resulting from an appeal. In such circumstances it will be a matter for the Head of Planning and Regeneration in consultation with the Head of Legal, Equalities and Democratic Services to establish

whether a suitably experienced and qualified Officer exists within his establishment who is able to concur professionally with the decision taken. If so, then they will act as the Council's professional witness. If not, then the use of planning consultants will be explored. It is rarely in the Council's best interests for individual Members to represent the Council but this may be appropriate where factual evidence is in dispute particularly in enforcement appeals.

- 9.6 All planning approvals and refusals shall be fully minuted. Unless otherwise stated, these should accord with those set out in the Agenda subject to the incorporation of any further conditions or reasons (or variations) thought to be necessary by the Head of Planning & Regeneration to give full effect to the Council's wishes about any particular application.

### **10. DEALING WITH APPLICATIONS SUBMITTED BY MEMBERS AND OFFICERS AND COUNCIL SERVICE AREAS**

- 10.1 The submission of planning applications and/or development plan proposals by serving Members, Officers, or their close friends and relatives can easily give rise to suspicions of impropriety, including proposals for the Council's own development. The following points should be taken into account:

#### **Members**

- 10.2 Serving Members of the Council who act as agents for people pursuing planning matters shall not be Members of the Planning Committee.
- 10.3 Members should take no part in the processing of their own applications or those of their immediate family or close friends or anyone with whom the Member has a close personal association.
- 10.4 As soon as a planning application is received from a Member, the Head of Planning and Regeneration must inform the Council's Monitoring Officer, who will take such steps as are necessary to ensure that applications for dispensations from other Members of the Planning Committee are considered as soon as possible.
- 10.5 Members who are members of the Planning Committee should declare an interest in respect of applications prepared by them or on their behalf and leave the meeting while such applications are under consideration.
- 10.6 Applications of currently serving Members should not be dealt with under delegated powers and should be decided by the Planning Committee.

#### **Officers**

- 10.7 Serving Officers in the planning department should never act as agents for people pursuing a planning matter. If an officer in another department acts as such agent for people pursuing a planning matter, the matter

should not be dealt with under delegated powers and should be decided by the Planning Committee.

- 10.8 Officers should take no part in the processing of their own planning applications or those of their immediate family or close friends.
- 10.9 Applications for Planning Consents made to Bromsgrove District Council by Officers currently working for either Bromsgrove District Council or Redditch Borough Council or their family members, whether or not directly employed by them, should not be dealt with under delegated powers and should be decided by the Planning Committee.

### **Developments by the Council**

- 10.10 Planning applications made by Council Service Areas must be processed in accordance with existing policy and treated in the same way as a private application except that all such applications shall be considered by the Planning Committee and not determined under delegated powers.

### **Applications submitted by former Members and former employees**

- 10.11 There has been some considerable concern about former employees setting up their own consultancies and providing planning advice in the Bromsgrove District area and about the consideration of applications by or on behalf of former Members. Both circumstances occur from time to time and the guiding principles should be that:-
- (i) applications by former Members will be treated in the same way as any other application;
  - (ii) applications by former employees whether they are acting for themselves or an agent for others will be treated in exactly the same way as any other application.

### **Applications by Members of Political Associations**

- 10.12 Where a planning application is made by someone who is not a Member, but is known to be a member of the same Political Association as some of the members of the Planning Committee, those Members will need to give consideration as to whether they should declare an interest when the application is considered.
- 10.13 In some cases, no declaration will be necessary, but in other cases the relationship between the parties may be close enough to warrant a declaration of interest. Councillors should have regard to the Councillors' Code of Conduct and should err on the side of safety.

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**APPENDIX 3: Audit and Standards Committees - Worcestershire Councils**

Council	Quorum	Committee Make-up
<p><b>Malvern Hills District Council</b></p> <p><u>Audit &amp; Standards Committee</u></p>	<p>The quorum of the Committee will be <b>3 Malvern Hills District Council members</b> (*NB where any Parish/Town Council standards complaints area being reviewed at least 1 Town/Parish member should also be present). Political balance will apply.</p>	<p><b>Composition:</b> No member of the Executive Committee will be eligible for membership of the Audit and Standards Committee. The Committee will comprise up to elected 7 members.</p>
<p><b>Redditch Borough Council</b></p> <p><u>Audit, Governance &amp; Standards Committee</u></p>	<p>4 (to include at least one member of the majority group)</p>	<p><b>Composition:</b> There are 9 Councillors on the Committee.</p> <p>The Chair and Vice Chair cannot be members of the controlling group. Executive Committee members may not be, or act as substitutes for, members of the Committee. In addition, Party Group Leaders may not be, or act as substitutes for, members of the Committee.</p> <p>The lead Portfolio Holder for finance is required to attend meetings of the Committee though cannot be a member of the Committee.</p>
<p><b>Worcester City Council</b></p> <p><u>Audit &amp; Governance Committee</u></p>	<p>No business shall be transacted at a meeting of a Committee unless <b>at least one third</b> of the whole number of Members of the Committee <b>or three, whichever is the greater</b> are present.</p>	<p><b>Composition:</b> All Councillors are eligible to be Members of the Audit and Governance Committee. The size of the Audit and Governance Committee shall be determined from time to time by the Council. The Audit and Governance Committee may recommend to Council the appointment of one other person with particular skills that will be useful to the committee as a non-voting co-optee.</p>

<p><b>Worcestershire County Council</b></p> <p><u>Audit and Governance</u></p>	<p>Except where authorised by statute or ordered by the Council, business shall not be transacted at a meeting of the Council, any Committee, Panel or other member body unless <b>at least one quarter of the members of the Committee</b> or other member body are present provided that <b>in no case shall the quorum be less than three members.</b></p>	<p><b>Composition:</b> There are currently 8 seats on the Audit and Governance Committee (including one vacancy at the time of writing.)</p>
<p><b>Wychavon District Council</b></p> <p><u>Audit Committee</u></p>	<p>The Quorum for the Committee is 3 Wychavon Councillors.</p>	<p><b>Composition:</b> The Committee comprises 6 persons – 5 Wychavon Councillors (all voting Members) and 1 Independent Member (non-voting co-optee)</p> <p><b>Substitutions:</b> Named substitutes will be permitted to attend meetings in place of Committee Members, provided the substitute form has been completed and lodged in advance of the Committee meeting. Group Leaders will provide details of the named substitutes, who must all have undergone relevant training</p>
<p><b>Wyre Forest District Council</b></p> <p><u>Audit Committee</u></p>	<p>The Quorum at meetings of Council or any of its Committees is <b>half of its membership.</b></p> <p>There are currently 8 members of the Audit Committee – therefore the quorum is 4.</p>	<p><b>Substitutions:</b> Only non-Cabinet members may act as substitutes at the Audit and Overview and Scrutiny Committees.</p>



**Appendix 4: Attendance at meetings of the Audit, Standards and Governance**

**Committee**

**July 2020 – September 2023**

<b>Date</b>	<b>Number of members present</b>
14/09/2023	9
17/07/2023	12
01/06/2023	10
09/03/2023	5 (late start)
19/01/2023	7 (2 arrived late)
14/12/2022	8
09/11/2022	8
13/10/2022	8
21/07/2022	5 (late start)
12/04/2022	9
02/02/2022	5
07/10/2021	7
15/07/2021	6
11/03/2021	9
21/01/2021	8
24/11/2020	7
10/09/2020	6
22/07/2020	6

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## PART 2

### THE ARTICLES OF CONSTITUTION - EXTRACT

#### ARTICLE 4 – THE FULL COUNCIL

##### 4.1 Meanings

"Policy Framework"

The policy framework means the following plans and strategies:-

- ~~Annual Performance Plan~~
- ~~Crime and Disorder Reduction Plan;~~
- ~~Plans and strategies which together comprise the Local Development Framework;~~
- The Development Plan;
- ~~The Council Plan;~~
- ~~Carbon Reduction Strategy~~
- ~~Contract Procedure Rules~~
- Inclusive Equalities Scheme
- ~~Pay Policy.~~

"Budget"

The budget includes the allocation of financial resources to different services and projects, the medium-term financial plan, proposed contingency funds, setting the Council tax, decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits.

##### 4.2 Functions of the full Council

Only the Council will exercise the following functions:

- a. adopting and changing the Constitution;
- b. approving or adopting the Budget and the Policy Framework and any application to the Secretary of State in respect of any Housing Land Transfer;
- c. subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 9 of this Constitution, making decisions about any matter in the discharge of a Cabinet function which could have been (but was not) covered by the Budget and Policy Framework or where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget

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## PART 2

- d. appointing or removing from office:-
  - (i) the Leader;
  - (ii) the Chairman or Vice-Chairman;
- e. confirming the appointment of the Chief Executive, Monitoring Officer and Section 151 Officer;
- f. agreeing and/or amending the terms of reference for committees and Boards, deciding on their composition and, subject to Article 8.3, making appointments to them;
- g. the appointment and revocation of appointments of representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- h. adopting the Members' allowances scheme;
- j. changing the name of the area or conferring the title of honorary alderman;
- k. making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- l. all local choice functions set out in Part 3 of this Constitution (Responsibilities for Functions) which the Council decides should be undertaken by itself rather than the Cabinet; and
- m. all other matters which, by law, must be reserved to Council.

### **4.3 Council meetings**

There are three types of Council meeting:

- a. the annual meeting;
- b. ordinary meetings;
- c. extraordinary meetings

and they will be conducted in accordance with the Council Procedure Rules in Part 8 of this Constitution.

## PART 2

### 4.4 Responsibility for functions

The Council will maintain the tables in Parts 3 - 7 of this Constitution setting out:

- a. those functions which are the responsibility of the Council;
- b. those functions which are the responsibility of the Council and which it has delegated to committees or officers.

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**THE ARTICLES OF CONSTITUTION - EXTRACT**

**ARTICLE 4 – THE FULL COUNCIL**

**4.1 Meanings**

"Policy Framework"

The policy framework means the following plans and strategies:-

- Annual Performance Plan
- Crime and Disorder Reduction Plan;
- Plans and strategies which together comprise the Local Development Framework;
- The Development Plan;
- The Council Plan;
- Inclusive Equalities Scheme
- Pay Policy.

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The budget includes the allocation of financial resources to different services and projects, the medium-term financial plan, proposed contingency funds, setting the Council tax, decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits.

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- c. subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 9 of this Constitution, making decisions about any matter in the discharge of a Cabinet function which could have been (but was not) covered by the Budget and Policy Framework or where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget
- d. appointing or removing from office:-

- (i) the Leader;
  - (ii) the Chairman or Vice-Chairman;
- e. confirming the appointment of the Chief Executive, Monitoring Officer and Section 151 Officer;
  - f. agreeing and/or amending the terms of reference for committees and Boards, deciding on their composition and, subject to Article 8.3, making appointments to them;
  - g. the appointment and revocation of appointments of representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
  - h. adopting the Members' allowances scheme;
  - j. changing the name of the area or conferring the title of honorary alderman;
  - k. making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
  - l. all local choice functions set out in Part 3 of this Constitution (Responsibilities for Functions) which the Council decides should be undertaken by itself rather than the Cabinet; and
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### **4.4 Responsibility for functions**



# Agenda Item 11

## PART 2

The Council will maintain the tables in Parts 3 - 7 of this Constitution setting out:

- a. those functions which are the responsibility of the Council;
- b. those functions which are the responsibility of the Council and which it has delegated to committees or officers.

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## Appendix 7 – Policy Frameworks at other Worcestershire Councils

Council is asked to note that unless otherwise stated, the information provided in this appendix was accurate as of January 2023 when this subject was reviewed by the Constitution Review Working Group.

<b>Policy Framework Items for Worcestershire Councils</b>	
<b>Malvern Hills District Council</b>	<ul style="list-style-type: none"> <li>▪ The Council's Five-Year Plan</li> <li>▪ Community Safety Partnership</li> <li>▪ Plans and strategies which together form the Local Development Scheme</li> <li>▪ Any other plan which is required by statute to be approved by the Council.</li> </ul>
<b>Redditch Borough Council</b>  (Updated September 2023)	<ul style="list-style-type: none"> <li>▪ Climate Change Strategy</li> <li>▪ Contract Procedure Rules;</li> <li>▪ Council Plan;</li> <li>▪ Development Plan;</li> <li>▪ Equalities Strategy;</li> <li>▪ Housing Asset Management Strategy; and</li> <li>▪ HRA 30-year Business Plan</li> </ul>
<b>Worcester City Council</b>	<ul style="list-style-type: none"> <li>▪ Plans and strategies which together comprise the Local Development Scheme</li> <li>▪ Worcestershire Housing Strategy</li> <li>▪ Plans and Strategies for Finance and Asset Management</li> <li>▪ Corporate Plan</li> <li>▪ Statement of Licensing Policy under the Licensing Act 2003</li> </ul>

## Appendix 7 – Policy Frameworks at other Worcestershire Councils

Council is asked to note that unless otherwise stated, the information provided in this appendix was accurate as of January 2023 when this subject was reviewed by the Constitution Review Working Group.

<p><b>Worcestershire County Council</b></p>	<ul style="list-style-type: none"> <li>▪ Sustainable Community Strategy (if any)</li> <li>▪ Corporate Plan</li> <li>▪ Children and Young People's Plan</li> <li>▪ Local Transport Plan</li> <li>▪ The approval, for the purpose of its submission to the Secretary of State for independent examination under section 20 (independent examination) of the Planning and Compulsory Purchase Act 2004, of a development plan document</li> <li>▪ Youth Justice Plan</li> <li>▪ 'Act Local in Worcestershire' framework</li> <li>▪ Such other plans and strategies as required by law to form part of the Policy Framework or which may be and have been adopted to be part of that Framework</li> </ul>
<p><b>Wychavon District Council</b></p>	<ul style="list-style-type: none"> <li>▪ Corporate Strategy</li> <li>▪ Financial Strategy</li> <li>▪ Business Plan</li> <li>▪ Housing Strategy</li> <li>▪ The Development Plan</li> <li>▪ Neighbourhood Plans</li> </ul>
<p><b>Wyre Forest District Council</b></p>	<ul style="list-style-type: none"> <li>▪ Plans or strategies that are required under statute</li> <li>▪ Crime and Disorder Reduction Strategy</li> <li>▪ Development Plan documents</li> <li>▪ Licensing Authority Policy Statement</li> <li>▪ Plans and alterations which together comprise the Development Plan</li> <li>▪ Corporate Plan</li> <li>▪ Financial Strategy, including any plan or strategy for the control of the authority's borrowing, investments or capital expenditure or for determining the authority's minimum revenue provision</li> <li>▪ Shared Services Strategy</li> <li>▪ Fees and Charges Strategy</li> <li>▪ Property Rationalisation Strategy</li> </ul>

## **Appendix 7 – Policy Frameworks at other Worcestershire Councils**

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