

SLOUGH BOROUGH COUNCIL

Report To: Council

Date: 27th July 2023

Subject: Review of the Council's Constitution

Chief Officer: Stephen Taylor – Monitoring Officer

Contact Officer: Sarah Wilson – Head of Legal

Ward(s): All

Exempt: No

Appendices: Appendix 1 - Part 3.4 – Responsibility for Council functions – Planning Committee only
Appendix 2 - Part 4 – Council Procedure Rules – Rule 30 only
Appendix 3 - Part 5 – Code of Conduct for Members in relation to Planning matters

1. **Summary and Recommendations**

The report seeks approval for amendments to the constitution as part of an ongoing review. The changes relate to the functions, procedures and code of conduct for planning matters and the Planning Committee.

Recommendation(s)/Proposed Action

Council is recommended to:

1. Consider and adopt the amendments as follows:
 - a. Part 3.4 - Responsibility for Council Functions - replace the existing terms of reference for Planning Committee with those in Appendix 1;
 - b. Part 4.1 - Council Procedure Rules – replace Rule 30.1 and 30.3 with the new rules set out in the body of this report;
 - c. Part 5.2 - Code of Conduct for Members in relation to Planning matters.
2. Agree that the amendments to the Constitution will come into effect on the day following the Council meeting.

2. **Commissioner Review**

How members approach planning matters, both outside the formal committee and within it has a significant impact on the reputation of the council. Members will wish to give conspicuous attention to demonstrating that the planning process is fair balanced and transparent. These proposals provide a helpful underpinning to that.

3. **Council priorities**

The Constitution is central to ensuring accountability in the delivery of all priority outcomes set out in the Council's recovery plan and the emerging corporate plan. Having an up to date and accurate constitution is critical to improving the Council's governance processes and will allow existing and new officers, elected members and the public to understand how decisions are made.

4. **Other Implications**

(a) Financial

There are no financial implications of the proposed action.

(b) Risk Management

The Council is legally obligated to keep its constitution under review and ensure that officers and members comply with it. Failure to comply with the constitution could render decisions unlawful, as well as failing to meet requirements in relation to public transparency.

The proposed changes are to ensure that when making decisions on planning matters, whether at officer or member level, those decisions are made in a transparent, fair and lawful manner. This will help reduce the risk of successful legal challenges and will allow the public to better understand the decision-making process and the rights of elected representatives, applicants and those who have made representations to take part in the process.

(c) Legal Implications

Under Section 37 of the Local Government Act 2000, the Council is required to prepare and keep up to date a document, referred to as the Constitution, which contains as a minimum:

- (i) The Council's Standing Orders
- (ii) The Council's Code of Conduct for Members; and
- (iii) Such other information as the Secretary of State directs – under the Local Government Act 2000 (Constitutions)(England) Direction 2000 this information includes the membership, terms of reference and functions of the Council's Committees and Sub-Committees, and any rules governing the conduct and proceedings of those Committees and Sub-Committees.

Subject to those provisions, it is for the Council to decide what information its Constitution should contain.

When determining planning applications, the Council is acting in a quasi-judicial manner and must ensure that those involved in the process are acting in a fair, impartial and transparent way. The Local Government Association (LGA) has published guidance called Probity in planning : Advice for councillors and officers making planning decisions. This confirms the following considerations:

- (a) Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest.

- (b) Planning affects people's lives and land and property interests, particularly the financial value of landholdings, and the quality of their settings.
- (c) Opposing views are often strongly held by those involved. Whilst councillors must take account of these views, they should not favour any person, company, group or locality, or appear to be doing so.
- (d) The risk of controversy and conflict is heightened by a system which invites public opinion before taking decisions and it is particularly important that the process is open and transparent.
- (e) Councillors and officers have different but complementary roles and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.
- (f) Effective delegation can help ensure that decisions on planning issues are made quickly, and that resources are appropriately concentrated on the applications of greatest significance to the local area.
- (g) Officers and serving councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them.
- (h) The decision making process must be seen to be fair and impartial from the perspective of an external observer. Members who want to speak for or against a proposal as a campaigner, including in relation to a proposal in their ward, should withdraw from being a member of the planning committee.
- (i) If a councillor speaks on behalf of a lobby group at committee, they should withdraw from the meeting once any public or ward member speaking opportunities have been completed to counter any suggestion that members of the committee may have been influenced by their continuing presence.
- (j) Planning decisions cannot be made on a party political basis – the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- (k) Call in procedures, whereby councillors can require a proposal that would normally be determined under delegated authority to be determined by planning committee, should require the reasons for call in to be recorded in writing and to refer solely to matters of material planning concern.
- (l) Officer reports on planning applications must be accurate and include the substance of any objections and other responses, contain a clear assessment against relevant policies and any other material planning considerations, contain a written recommendation, technical appraisals to justify the recommendation and any oral updates or changes to the report should be recorded.
- (m) Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councillors and third party objectors. The time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made in writing. New documents should not be circulated to the committee.
- (n) Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation: the areas of difference should be discussed and reasons for it with officers in advance of the meeting, the detailed reasons should be recorded as part of the mover's motion, consider adjournment for a few minutes for reasons to be discussed, consider deferring to another meeting to have the reasons tested and discussed.
- (o) If the committee makes a decision contrary to the officers' recommendation, a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain their planning

reasons in full for not agreeing with the officers' recommendation, which should be set in the context of the development plan or planning framework.

- (p) Site visits – there should be a clear and consistent approach to when and how to hold a site visit and how to conduct it. Visits should only be used where the benefit is clear and substantial and a record should be kept of the reasons why a site visit is called. As site visit is only likely to be necessary if the impact of the proposed development is difficult to visualise from the plans and any supporting material, the comments of the applicant and objectors cannot be expressed adequately in writing or the proposal is particularly controversial.

(d) Equalities Implications

Having a clear, up to date constitution will assist the Council to make fair and lawful decisions. Planning decisions can be challenged on the grounds that the decision breaches the Equality Act 2010. Having clear terms of reference, delegated authority and committee procedure helps ensure that only relevant considerations are taken into account.

5. **Supporting Information**

Part 3.4 – Responsibility for Council Functions

Part 3.4 sets out the functions of full Council and all committees and sub-committees of Council. This includes the terms of reference, functions and permitted delegation for each committee, including the Planning Committee. Appendix 1 contains the proposed amendments for Planning Committee. The membership rules remain as in the current rules, with the lead member with responsibility for planning permitted to be a member of the committee, although this is not a requirement. The Probity in Planning guidance refers to the Planning Advisory Service advise that the lead member for planning plays an important role in driving planning policies and proposals, but should exclude themselves from decision-making committees to avoid a perception of a conflict of interest and predisposition. Where a lead member is on the planning committee, they should withdraw when the committee is considering the Council's own schemes or other applications that they have been seen to support previously.

The current rules do not clearly set out the scheme of delegation, instead referring to operational aspects falling to be dealt with by officers under the scheme of delegation. For transparency, the functions that are reserved to the committee have been included in the functions column. This includes an additional exemption for applications with significant public objection. This permits committee to consider smaller applications which may be controversial in the local area and does not rely on objectors requesting intervention via a ward councillor, although many residents will still choose to liaise with their ward councillors.

The public participation scheme for planning has been moved from the Code of Conduct to this part. This sets out the rights of stakeholders to speak, the order of speaking and a time limit on each distinct category of speakers. The time limit of four minutes is in place under the current rules, although there was a lack of consistency within different sections of the Code of Conduct, with a time limit of four minutes for the application appearing in the public participation section and a time limit of 10 minutes appearing in the developer brief. There was also a reference to the ability of members of the committee and ward councillors to ask questions of the developer and officers, which risks confusing the separate role of the committee members and ward councillors. The Probity in Planning guidance

emphasises the importance of equity in relation to the time allowed for presentations for and against the development and presentations should be limited to reinforcing or amplifying representations already made as opposed to introducing new points.

Whilst most representations by elected members will be via the ward councillor, the amended rules clarify that other appropriate elected representatives may speak. This will allow elected members to request to speak about developments in neighbouring areas or in an area which will impact on a wider part of the Borough. All speakers should restrict their representations to material planning issues and are not permitted to hand out photographic or written material. Speakers should not seek to question officers or the applicant as that is a matter for the committee members. Elected members should give written notice in advance to the Chair of the Planning Committee and an invited to consider speaking to planning officers in advance if they are unsure whether their representations constitute material planning considerations.

Part 4 – Council Procedure Rules

This part covers the procedure rules as they apply to council and committee meetings. Part 30 is the rule relied upon to allow elected members who are not members of the committee to speak. It is proposed that the current rules are amended as set out in Appendix 3.

The amendments clarify that as well as limiting comments to material planning considerations, non-committee members are also subject to the rules on order of speakers and time limit. The Council Procedure Rules do not apply to Cabinet meetings, which are governed by the Executive Procedure Rules. This is confirmed by Rule 32, however Rule 30 has been amended to remove reference to Cabinet.

Part 5 – Code of Conduct for Members in relation to Planning matters

This part has been changed to remove reference to Licensing matters, as these are separately governed by secondary legislation and licensing policy and procedures. The Code has been updated to reflect the latest guidance and remove contradictory information and shortened to remove the public participation scheme and developer guide. The rules for third parties to speak at the committee are proposed to be moved to the terms of reference and detail to be given to the applicant and members of the public do not need to be included in the Constitution. Finally an additional section has been added on appeals and the role of elected members in the process.

6 Comments of Other Committees

A working group of members reviewed the proposed changes and supported the amendments. The group recommended that planning committee members also reviewed the proposals. The planning committee members held an informal meeting on 11 July 2023 to discuss the changes.

Members agreed it was important to have consistency between Rule 30 in the Council Procedure Rules and the participation rights of elected representatives. Members also agreed it was important to have time limits on those speaking and to ensure that all comments were restricted to material planning considerations. If in doubt, elected members are encouraged to speak to the planning team in advance

of the committee. Members agreed that the right for a non ward member to speak should be subject to prior notification to the Planning Committee Chair and be limited to material planning considerations and subject to a time limit to comply with the guidance.

Members supported the addition of “significant public objection” to allow a matter to be referred to Planning Committee, rather than relying on members of the public to have to request their ward member to raise this and requested that this apply to approval and refusal where significant representations are made against the officer recommendation. Whilst many constituents will continue to speak to their ward members, it was recognised that there may be differences of opinion in the local community and reasons why some ward members are not able to represent their constituents, for example due to being a member of the committee or being conflicted in another way.

7 **Conclusion**

Approval of the constitution is a matter for Full Council. The changes represent best practice.

8. **Background Papers**

None.