



Date: **3 November 2021**
Ask For: Katie Brewer
Direct Dial: **(01843) 577046**
Email: **katie.brewer@thanet.gov.uk**

CONSTITUTIONAL REVIEW WORKING PARTY

11 NOVEMBER 2021

A meeting of the Constitutional Review Working Party will be held at **7.00 pm on Thursday, 11 November 2021** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Independent Members: Peter Tucker (Chair) and Lee Wellbrook (Vice-Chair);

Councillors: Ashbee, Hopkinson, Rusiecki and Hart

AGENDA

Item
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST** (Pages 3 - 4)

To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest advice attached to this Agenda. If a Member declares an interest, they should complete the [Declaration of Interest Form](#)

3. **MINUTES OF PREVIOUS MEETING** (Pages 5 - 6)

To approve the Minutes of the Constitutional Review Working Party meeting held on 15 June 2021, copy attached.

4. **PLANNING PROTOCOL CHANGES** (Pages 7 - 10)

5. **AMENDMENTS TO MANDATORY TRAINING** (Pages 11 - 14)

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Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or
Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
 - exercises functions of a public nature; or
 - is directed to charitable purposes; or
 - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992



If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

Gifts, Benefits and Hospitality

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £25 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

What if I am unsure?

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Committee Services Manager well in advance of the meeting.

If you need to declare an interest then please complete the declaration of [interest form](#).

CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 15 June 2021 at 5.30 pm in the Council Chamber, Cecil Street, Margate, Kent.

Present: Mr Peter Tucker (Chair); Mr Lee Wellbrook, Councillors Ashbee, Hopkinson, Rusiecki and Hart.

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF PREVIOUS MEETING

Mr Tucker proposed, Cllr Hart seconded and the minutes of the meeting held on 23 February 2021 were approved and signed as a correct record.

4. DRAFT MEMBER PARENTAL LEAVE POLICY

Nick Hughes presented the report, explaining that:

- There was no legal requirement to adopt a parental leave policy, however, it would be progressive to do so and would remove barriers for individuals thinking of becoming councillors.
- A correction was made to the report clarifying that changes would only relate to Special Responsibility Allowances - Basic Allowances would not be affected by parental leave.
- The report allowed for a blanket acceptance that parental leave would be a valid reason not to attend a meeting for a period of more than 6 months, as required under the Local Government Act 1972 (as amended). This would remove the need for a vote requesting an exemption, every time an individual wished to take parental leave.
- In summary, option 1 was similar to provisions in place for officers, option 2 was in line with provisions for MPs and option 3 was based on the model policy for local government councillors, provided on the LGA website.

During discussion the following points were raised:

- Not many councils had adopted a parental leave policy and in doing so TDC would be amongst the first.
- When taking parental leave, the person would remain a councillor but would not be actively undertaking the role for which they received their Special Responsibility Allowance. TDC could appoint another person to take on that role with the same allowance for the period of absence. There was enough flexibility in the budget to withstand the additional expenditure.
- The proposal was commended, commenting that there was a problem nationally with attracting and retaining young people to be councillors in local government.
- Mimicking the employee arrangements was deemed an appropriate option with the intention of encouraging equality between members and employees. However, a few points were raised in relation to the differences between staff and member roles. It was commented that the committee ought to consider the merit

to members of each proposal alone, rather than accepting an option solely based on existing provision for PAYE employees.

- A question was raised with regard to mitigating against councillors taking on additional responsibility and then immediately requiring parental leave. This was considered unreasonable and not practicable.
- The Council was requested not to use the word 'earnings' in the report when referring to members' allowances as councillors are not on PAYE contracts.
- The option in line with staff provision, which included reducing payment to 50% after 10 weeks, was felt may cause the financial issues that TDC intended to avoid.

Cllr Rusiecki proposed and Cllr Ashbee seconded that Option 1 be put forward as a recommendation to the Standards Committee, namely:

"Members are entitled on a sliding scale to:

10 weeks at 90% of Special Responsibility Allowances, followed by:

16 weeks at 50% of Special Responsibility Allowances followed by unpaid leave for any additional leave agreed up to 52 weeks."

After further discussions Cllr Ashbee proposed and Cllr Hopkinson seconded that members would recommend the draft parental leave policy to the Standards Committee including the pay rates as shown at Option 2, namely:

"Option 2

6 months full pay of Special Responsibility Allowance with any remaining leave being unpaid."

Following discussion, options 1 and 2 were put to a vote and Option 2 was agreed to be recommended to the Standards Committee.

Meeting concluded : 6.00 pm

Amendments to the Council's Planning Protocol

Meeting	11 November 2021
Report Author	Nicholas Hughes (Committee Services Manager) Iain Livingstone (Planning Applications Manager)
Portfolio Holder	Cllr Ashbee, Leader of the Council
Status	For Recommendation
Classification:	Unrestricted
Key Decision	No
Ward:	All Wards

Executive Summary:

The report outlines a proposed change to the Council's Constitution following the outcome of a Judicial review of a planning permission issued by the Council under delegated authority. The change would mean that any application by or on behalf of Thanet District Council, or on land owned by Thanet District Council, or owned by any company of which Thanet District Council is a party, would be required to be determined by the Council's Planning Committee.

Recommendation(s):

Members agree the specific amendment to the planning protocol to require all planning applications and applications under planning legislation to be reported to the Council's Planning Committee if Thanet District Council own the land to which the application relates, or if a company which the Council is a party to owns the land to which the application relates.

Corporate Implications

Financial and Value for Money

The proposed changes to the Constitution are proposed to resolve an issue raised by the result of the Judicial review, which resulted in planning permission being quashed and the Council paying the claimant's costs. The changes proposed seek to remove the potential for a similar challenge in the future by clarifying the process of determination of application where the Council could be perceived to be the beneficiary of any grant of planning permission. This would reduce the financial risk to the Council of similar claims.

Legal

The proposed change is as a result of the decision of the High Court on the judicial review. As a High Court decision, it carries significant weight and it is recommended that the Council makes the appropriate amendments to its Constitution to take account of the court's decision.

Corporate

The Council's Constitution is a live and evolving document. It is appropriate that various rules and procedures in it should be amended from time to time to reflect both legal decisions and changes in practice and procedure.

Having a clear and up-to-date Constitution helps the Council to display the communities corporate value as it helps officers and members to understand the rules of the Council.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- Environment
- Communities

1.0 Introduction and Background

1.1 The Council's Constitution at Part 3 Section C Paragraph 2.2.1 outlines that individual applications for planning permission will be determined by the Council's Planning Committee where:

a) It is an application which the Director of Housing and Planning or Planning Applications Manager in consultation with the Chairman or Vice Chairman of the Planning Committee, considers to be of significant public interest;

b) It is an application which Council Members have specifically requested to be referred to the Planning Committee in accordance with the requirements of any Member's Call in Procedure from time to time approved by the Council (set out in the Protocol for the Guidance of Planning Committee Members and Officers);

c) The application has been submitted by or on behalf of a Member or an Officer of the Council;

d) It is an application by or on behalf of Thanet District Council;

e) It is an application where the officer is recommending the approval not in accordance with the development plan.

1.2 The report outlines a proposed change to the Council's constitution following the outcome of a Judicial review of a planning permission issued by the Council under delegated authority. This review was listed as R (on the application of) "G" and Thanet District Council and Kentish Projects Limited. The planning application was made by Kentish Projects Limited on land owned by East Kent Opportunities LLP, a partnership of Thanet District Council and Kent County Council.

1.2 In the judicial review, the planning permission reference F/TH/19/0323, for the erection of 23 two storey dwellings and a three storey building accommodating 15 self-contained flats together with associated parking and landscaping on land on the north side of Stirling Way Ramsgate, was quashed. The High court considered that the Council would have benefited from the regeneration that the development of the site would foster, and due to the presence and content of a contract between EKO and the developer, Kentish Projects Limited, the application was considered to fall into the category of being "on behalf of the Council". The view of the high court was that the application should have therefore been determined by the planning committee, and that a fair-minded observer would conclude that there was a real possibility of bias in the Council's consideration of the application. Please note the judge stated that this did not mean there was bias in the determination, but that the appearance of bias was relevant.

2.0 Why amendments to the Planning Protocol are needed

2.1 Given the outcome of the judicial review, it is considered appropriate and important to avoid any future issues or concerns about the impression of impartiality of the Council's determination of planning applications when the Council is either the owner of the land (but not the applicant), or is part of a company which owns land. In those instances, any planning application or application made under planning legislation on that type of land should be required to be determined by the Council's Planning Committee. Members should note that the change would not apply to applications on land historically but not currently owned by the Council.

2.2 Officers are confident that this change would resolve an ambiguity in the current wording of the Constitution, whilst demonstrating transparency in decision-making of planning applications where there could be a perception of bias due to the Council's ownership of land or otherwise involvement in the land holding.

3.0 Proposed amendments to the Planning Protocol

3.1 To change Part 3 Section C Paragraph 2.2.1 (d) to insert the words "*or on land*"

owned by Thanet District Council or any company of which Thanet District Council is a party”.

- 3.2 The change would mean that any application by or on behalf of Thanet District Council, or on land owned by Thanet District Council, or owned by any company of which Thanet District Council is a party, would be required to be determined by the Council’s Planning Committee.

4.0 Options

- 4.1 Members could agree the specific amendments to the planning protocol with any amendments as they consider necessary or;
- 4.2 Members could reject the amendments.

5.0 Next Steps

- 5.1 Once agreed by the Constitutional Review Working Party, the amendments would be recommended to Standards for consideration and onward submission to Full Council.
- 5.2 If agreed by Council the amendments will be added to the Council’s Constitution and would become effective from the date of the Full council decision.

Contact Officer: *Iain Livingstone, Planning Applications Manager*
Reporting to: *Bob Porter, Director of Housing and Planning*

Annex List

None

Background Papers

None

Corporate Consultation

Finance: Chris Blundell, Director of Finance

Legal: Estelle Culligan, Director of Law and Democracy

Amending Mandatory training requirements

Constitutional Review Working Party - 11 November 2021

Report Author	Committee Services Manager
Portfolio Holder	Councillor Ashbee, Leader of the Council
Status	For Recommendation
Classification:	Unrestricted
Key Decision	No

Executive Summary:

A report making some training for Members mandatory was agreed by the Full Council in March 2019. This report asks the Constitutional Review Working Party to amend those rules to change the frequency of mandatory training from six monthly to yearly, whilst retaining the mandatory nature.

Recommendation(s):

- 1) To amend Article 8 of the Council's Constitution as follows:

"8.02 No member or substitute member of the General Purposes Committee, Planning Committee or the Licensing Board will be allowed to take their seat on the committee unless they have received relevant, appropriate, up-to-date training.

8.03 In relation to the Planning Committee this is attending at least one session run by the Council's Planning team every ~~six months~~ **year**. In relation to the Licensing Board this is attending at least one training session run by the Council's Licensing team every ~~six months~~ **year**. In relation to the General Purposes Committee this is attending at least one training session run by the Council's Monitoring Officer at least every ~~six months~~ **year**."

- 2) To delete paragraph 5.0 regarding Training, from the "Council's Protocol for the Guidance of Planning Committee Members and Officers"

Corporate Implications

Financial and Value for Money

Ensuring Members are trained to a consistently high standard is essential to ensure the quality of the decisions being made. This in turn will mitigate the risk of poor decisions made and consequently reduce the financial risk of costs being awarded against the Council resulting from poor decision making.

There is sufficient funding available within existing approved budgets to fund the training requirements.

Legal

High quality training will reduce the risk of poor quality decisions being taken and so reduce the risk of the Council having its decisions challenged through the courts, either via appeal to magistrates or via judicial review.

Corporate

It is important that Members on committees where complex legislation is involved and which have a close impact on the community, such as Planning and Licensing, are fully trained prior to taking their seat on the Committee. The general public must have full confidence in the decisions that are being made by elected members. Incorrect or poorly made decisions can have a detrimental effect on the reputation of the Council and can result in decisions being overturned on appeal and costs being awarded against the Council.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To foster good relations between people who share a protected characteristic and people who do not share it.

There are no specific equalities implications from this report.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- *Communities*

1.0 Introduction and Background

- 1.1 A report making some training for Members mandatory was agreed by the Full Council in March 2019. This report asks the Constitutional Review Working Party to amend those rules to change the frequency of mandatory training from six monthly to yearly, whilst retaining the mandatory nature.

1.2 This would be achieved by amending Article 8 of the Council's Constitution.

2.0 Why are changes proposed?

2.1 It has been two and half years since mandatory training was introduced for regulatory committees at TDC. It has proved to be an effective way of ensuring that Members are trained to a high standard and are kept up to date with the latest legislation. However, anecdotal feedback from the relevant service areas has indicated that the six monthly frequency has proved to be onerous on a number of occasions, especially as there have been few changes to legislation that would normally be the subject of training sessions.

2.2 It is proposed that the frequency of the mandatory training be reduced from six monthly to yearly. This still means that Councillors will receive regular training for the regulatory committees, but reduces the burden on both Members and Officers.

2.3 It is very important to note two key points at this juncture;

1) Whilst the amount of mandatory training is proposed to be set at yearly, that does not mean that only one training session will take place a year, purely that a minimum of one training session a year will take place. It would be common for there to be multiple sessions if necessary for example due to the introduction of new legislation or if new members were added to a committee.

2) The compulsory nature of training for the planning, Licensing and General Purposes committees will remain a feature of Article 8, the only changes being proposed is the frequency of training.

2.4 In addition it is also proposed that Paragraph 5 of the "Council's Protocol for the Guidance of Planning Committee Members and Officers" be deleted, as it has been rendered redundant due to the content of Article 8 of the constitution.

3.0 Options

3.1 Members could agree the amendments to the Article 8 with any amendments as they consider necessary or;

3.2 Members could reject the amendments.

4.0 Next Steps

5.1 Once agreed by the Constitutional Review Working Party, the amendments would be recommended to Standards for consideration and onward submission to Full Council.

5.2 If agreed by Council the amendments will be added to the Council's Constitution and would become effective from the date of the Full council decision.

Contact Officer: Nick Hughes, Committee Services Manager
Reporting to: Estelle Culligan, Director of Governance and Law

Annex List

None

Background Papers

None

Corporate Consultation

Finance: Chris Blundell, Director of Finance

Legal: Estelle Culligan, Director of Law & Democracy