

## Recommendations of the Constitutional Review Working Party

<b>Meeting</b>	Standards Committee
<b>Date</b>	25 November 2021
<b>Report Author</b>	Estelle Culligan (Director of Law and Democracy)
<b>Portfolio Holder</b>	Cllr Ash Ashbee, Leader
<b>Status</b>	For Recommendation
<b>Classification:</b>	Unrestricted
<b>Previously Considered by</b>	Constitutional Review Working Party on 11/11/21
<b>Ward:</b>	All

### Executive Summary:

A report to update the Committee on recommendations made by the Constitutional Review Working Party (CRWP) on 11/11/21 about proposed amendments to the Council's Constitution and to seek the Committee's approval to recommend the changes to Council.

### Recommendation(s):

- 1 To agree to recommend to Council to amend Part 3 Section C of the Constitution, "COUNCIL FUNCTIONS CARRIED OUT BY COMMITTEES", as follows (additional words in bold italics)

"2.2 Within the policies laid down by the Council, the Committee will:

2.2.1 Determine individual applications for planning permission and any other application made under planning legislation 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 **or on land owned by Thanet District Council or any company of which Thanet District Council is a party.**
- 2 To agree to recommend to Council to amend Article 8 of the Council's Constitution as follows (amended words in bold italics):

“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 **year**. In relation to the Licensing Board this is attending at least one training session run by the Council’s Licensing team every **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 **year**. “

3 To agree to recommend to delete paragraph 5 regarding Training, from the “Council’s Protocol for the Guidance of Planning Committee Members and Officers”, which states:

“Council appoints members to the Planning Committee at the Annual Meeting and is legally required to give preference to the nominations of the political party groups in order to achieve political balance. This will take priority over any other requirement that the Council may wish to impose on the appointment of members to the Planning Committee, such as a requirement that a member will first receive training. However, it is expected that all members of the Planning Committee (including substitute members) will participate in initial and regular update training and members who are not willing to do so should decline to be appointed to the Planning Committee. “

### **Financial and Value for Money**

In respect of recommendation 1, 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.

There are no financial implications of recommendations 2 and 3

### **Legal**

In respect of recommendation 1, 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.

There are no legal implications of recommendations 2 and 3

### **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 demonstrate transparency of decision making and helps officers, members and the public to better understand the rules of the Council.

## **Equality Act 2010 & Public Sector Equality Duty**

No implications

### **Corporate Priorities**

This report relates to the following corporate priorities: -  
(delete as appropriate)

- *Environment*
- *Communities*

## **1.0 Introduction and Background**

- 1.1 These recommendations were considered and approved by CRWP on 11 November 2021. The committee agreed that the Standards Committee consider the recommendations with a view to recommending to Council that the Constitution be amended to reflect the changes.
- 1.2 Both reports and minutes can be found at the following link:  
<https://democracy.thanet.gov.uk/ieListDocuments.aspx?CId=126&MId=6088>

### **Amendments to the delegations for Planning Committee**

- 1.3 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.
- 1.4 Members should note that the change would not apply to applications on land historically but not currently owned by the Council.
- 1.5 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.

### **Amendments to Article 8 of the Constitution**

- 1.6 Mandatory training was introduced for regulatory committees at TDC 2.5 years ago. 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 too onerous, especially as there have been few changes to legislation that would normally be the subject of training sessions.

- 1.7 It is proposed that the frequency of the mandatory training be reduced from six monthly to yearly. This means that Councillors will receive regular training for the regulatory committees, but reduces the burden on both Members and Officers.
- 1.8 It is very important to note two key points:
- a) The proposed change does not mean that only one training session will take place a year; simply that there will be a minimum of one training session a year. 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.
  - b) Training for Members who sit on the Planning, Licensing and General Purposes committees will remain compulsory under Article 8; the only changes being proposed is the frequency.
- 1.9 In addition it is also proposed that Paragraph 5 of the “Council’s Protocol for the Guidance of Planning Committee Members and Officers” is deleted. This is because it is made redundant because of the content of Article 8.

## **2 Options**

- 2.1 The recommended options are set out in paragraphs 1 - 3 under “Recommendations” above. Members could choose to reject the recommendations, in which case the Constitution will remain as it is, or proposed alternative changes to the relevant sections.

## **3 Next Steps**

- 3.1 If approved, the recommendations will be reported to the next Council meeting on 9 December for approval. If approved by Council, the Constitution will be amended accordingly.

Contact Officer: *Estelle Culligan (Director of Law and Democracy)*

Reporting to: *Madeline Homer (Chief Executive)*

### **Corporate Consultation**

**Finance:** *Chris Blundell (Director of Finance)*

**Legal:** *N/A*