

Amendments to the Constitution

Meeting	Council
Date	12 January 2022
Report Author	Estelle Culligan (Director of Law and Democracy)
Portfolio Holder	Cllr Ash Ashbee, Leader
Status	For Recommendation
Classification:	Unrestricted
Previously Considered by	Standards Committee on 25/11/21
Ward:	All

Executive Summary:

A report to update the Council on recommendations made by the Standards Committee on 25/11/21 about proposed amendments to the Council's Constitution.

Recommendation(s):

- 1 To agree 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 amend Article 8 of the 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 training 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 delete paragraph 5 regarding Training, from the “Council's Protocol for the Guidance of Planning Committee Members and Officers” within the Constitution, 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. “
- 4 To agree to amend the Social Media Guidance for Councillors to include the up to date guidance from the Local Government Association on the use of social media attached at Appendix 1.

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 - 4

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 - 4

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.

The authority to amend the Constitution from time to time is set out in Article 15 of the Constitution:

15.02 Changes to the Constitution

(a) Approval. Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Standards Committee. Such proposals to be formulated by the Constitutional Review Working Group.

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 and the Standards Committee on 25 November 2021.

1.2 Both reports and minutes can be found at the following links:
<https://democracy.thanet.gov.uk/ieListDocuments.aspx?CId=126&MId=6088>
<https://democracy.thanet.gov.uk/ieListDocuments.aspx?CId=117&MId=5995>

Amendments to the delegations for Planning Committee

1.3 Given the outcome of the recent 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 by the content of Article 8.

Amendments to the Social Media Guidance for Councillors

- 1.10 Article 9 of the Constitution sets out the role of the Standards Committee. Part of its role is as follows:

9.03 Role and Function

The Standards Committee will have the following roles and functions:

(c) To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes/protocols covering matters such as planning and Member/Officer relations.

- 1.11 The Standards Assessment sub-Committee has dealt with a number of allegations of breaches of the Members' Code of Conduct by town/parish and district councillors because of their use of social media. The Standards Committee notes that the Local Government Association has published some updated guidance about councillors' use of social media as part of its guidance on the Model Code of Conduct. The Standards Committee recommends that the Social Media Guidance for Councillors in the Constitution is updated to include this guidance. A copy of the LGA guidance is appended. The current Councillors' Social Media Guidance can be found in the Constitution, link:

<https://democracy.thanet.gov.uk/documents/s74410/Part5CodesandProtocolsGoogleDocs.pdf>

2 Options

- 2.1 The recommended options are set out in paragraphs 1 - 4 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 Constitution will be amended accordingly.

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Reporting to: *Madeline Homer (Chief Executive)*

Annexes

Annex 1 - Copy of Guidance on Social Media published by the LGA

Corporate Consultation

Finance: *Chris Blundell (Director of Finance)*

Legal: *N/A*