

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

ANNUAL COUNCIL - TUESDAY, 15 MAY 2018

Report Title	OUTCOME OF PLANNING PEER CHALLENGE - UPDATE AND CONSTITUTIONAL CHANGES
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Purpose of report	To note the progress being made against the approved Action Plan following the first meeting of the Cross Party Working Group and to agree constitutional changes enabling both Planning Committee and the new Local Plan Committee to operate in the new civic year.
Council priorities	Business and Jobs Homes and Communities
Implications:	
Financial/Staff	The action plan and constitutional changes will be delivered within existing resources.
Link to relevant CAT	None identified.
Risk Management	Failure to act on the recommendations of the Peer Challenge Team may adversely affect the reputation of the Council.
Equalities Impact Screening	No impact identified.
Human Rights	None identified.
Transformational Government	Not applicable.
Comments of Head of Paid Service	The report is satisfactory.
Comments of Section 151 Officer	The report is satisfactory.

Comments of Monitoring Officer	The report is satisfactory.
Consultees	Planning Peer Challenge Cross Party Working Group Planning Advisory Service
Background papers	Report to Council on 20 March 2018 and appendices – “Outcomes of the Planning Peer Challenge”
Recommendations	<p>COUNCIL IS RECOMMENDED TO:</p> <ol style="list-style-type: none"> 1. ESTABLISH THE LOCAL PLAN COMMITTEE ON THE TERMS SET OUT IN PARAGRAPH 3 AND APPENDIX 3. 2. APPROVE THE WORKING GROUP’S PROPOSALS IN RESPECT OF CALL-IN TO PLANNING COMMITTEE AS SET OUT IN PARAGRAPH 4 AND AUTHORISE THE MONITORING OFFICER TO AMEND THE CONSTITUTION ACCORDINGLY 3. APPROVE THE WORKING GROUP’S PROPOSALS IN RESPECT OF PLANNING COMMITTEE PROCEDURES AS SET OUT IN PARAGRAPH 5 AND AUTHORISE THE MONITORING OFFICER TO AMEND THE CONSTITUTION ACCORDINGLY. 4. NOTE: <ol style="list-style-type: none"> A. THE PROPOSALS TO REFORM THE PLANNING COMMITTEE PROCEDURES AS SET OUT IN PARAGRAPH 2; AND B. THE PROGRESS MADE AGAINST THE ACTION PLAN. 5. AUTHORISE THE MONITORING OFFICER TO MAKE ANY CONSEQUENTIAL CHANGES TO THE CONSTITUTION ARISING FROM THIS REPORT.

1 INTRODUCTION

- 1.1 Following approval of the recommendations of the Planning Peer Challenge at Council on 20 March 2018 progress has been made in taking forward the action plan through the establishment of a Cross Party Working Group. The Terms of reference of the Working Group including the agreed Group membership are attached at Appendix 1.
- 1.2 External expertise to support the Working Group has been sourced through the national Planning Advisory Service (PAS). Jack Hopkins, who was part of the original Peer Challenge Team, has been appointed as the independent chair. Technical planning expertise to support both Members and Officers is being provided by John Cummins who is an independent planning consultant working for PAS with significant experience of advising local authorities on best practice and delivering planning improvement.

- 1.3 The Working Group met for the first time on 13 April 2018 and will meet monthly to guide progress on the project and ensure the delivery of the recommendations of the Planning Peer Challenge. Members of the group will act as “champions” and monitor progress against the approved action plan. The updated action plan following this meeting is attached at Appendix 2.

2 PLANNING COMMITTEE PROCESSES

- 2.1 In their report, the Peer Challenge Team recommended (paragraph 4.7 of the report) that:

- 2.1.1 Site visits should be limited to those where there is clear value added;
- 2.1.2 Consideration be given as to whether site visits should be on a different day to the Planning Committee meeting;
- 2.1.3 Consideration be given to changing the timing and nature of the briefing and whether it should be on a different day to the Planning Committee meeting.

- 2.2 The Working Group considered these recommendations at its meeting on 13 April 2018 and the consensus was that the format and process of the Planning Committee day be amended as follows for meetings in the new Civic year:

- 2.2.1 The Chairman in consultation with the Strategic Director of Place (or their nominated senior planning officer) agree which Planning Committee agenda items will be subject to site visits.
- 2.2.2 Site visits and a Planning Committee briefing to be held in the afternoon/evening one week (Tuesday) before Planning Committee.
- 2.2.3 The Update Sheet will be e-mailed to members at 12.00pm on the day of Planning Committee (Tuesday) and officers will be available to answer any questions arising from the contents of the Update Sheet.

- 2.3 The procedures that feed into the effective working of the Planning Committee are not (and do not need to be) enshrined in the Constitution. Council is asked to note the progress made in implementing the Peer Challenge Team’s recommendations. The format and processes of the Planning Committee day will continue to be refined by the Working Group with relevant progress against the action plan being reported to Council as appropriate.

3 LOCAL PLAN COMMITTEE

- 3.1 At its meeting on 20 March 2018 Council resolved to implement the Peer Challenge Team’s recommendation to reform the Local Plan Advisory Committee to give it appropriate decision-making powers (action plan reference 2.1). The implication of this is that Council will delegate the power to decide on specific matters to the reformed committee in place of full Council itself.
- 3.2 Legal advice has been sought on what decision-making powers can be delegated to the reformed committee – to be called the Local Plan Committee (LPC) – and the Working Group has considered the role that it might play. The proposed terms of reference are set out in Appendix 3.

3.3 Decision Making Powers

3.3.1 The LPC will be a sub-committee of Council. Legal advice has been obtained on the decision-making functions that it can carry out. In summary, the LPC cannot be given functions carried out by the Executive (i.e. Cabinet), it can only be given functions carried out by full Council (and then only where not prohibited by statute). The areas where Council decision-making can be delegated, and the Working Group have agreed are appropriate, are as follows:

- a) **Development Plan Documents (DPD)** – these are the Council's major planning policies. The Local Plan is a DPD. The legislation that sets out whether a function sits with the Executive or Council says that DPDs must be:
 - i. proposed/drafted by the Executive; and then
 - ii. approved by Council for:
 - A. publication for public consultation and submission to examination by a planning inspector;
 - B. adoption.

The process set out in legislation means that the Executive's control comes from proposing/drafting DPDs since Council will only decide on what is put in front of it. If Council is minded not to approve the Executive's draft at the above stages, currently it has the power to send it back to the Executive to reconsider.

Legal advice confirms that Council can delegate to the LPC its power to approve DPDs for public consultation and submission to examination by a planning inspector. The consensus at the Working Group is that the LPC should be given these powers. Government Planning Policy Guidance states that final adoption of a DPD must stay with full Council. A flowchart of the new process for DPDs is set out in Appendix 4.

- b) **Supplementary Planning Documents (SPD)** – these are the Council's detailed guidance documents on particular planning matters. They cannot contradict any DPDs that are in place. The process for adopting an SPD is similar to that of DPDs apart from:
 - i. inspection by a planning inspector is not required;
 - ii. full Council can delegate its power to adopt an SPD to a committee.

Legal advice confirms that Council can delegate to the LPC its power to approve SPDs for public consultation and to adopt them. The consensus at the Working Group is that the LPC should be given these powers. A flowchart of the new process for SPDs is set out in Appendix 4.

- c) **HS2 Strategy** – Council has previously voted on the adoption of the Council's HS2 Strategy. The consensus at the Working Group was that the LPC would be the appropriate place to monitor developments against the parameters set out in the Council's HS2 Strategy and make amendments to that strategy as appropriate. It is therefore proposed that Council delegates this function to the LPC.

3.3.2 It is an established legal principle in respect of local authority delegations that any body or person given delegated powers may decide not to exercise them and can refer any decision back up to the “parent” body/person who delegated the powers to them. Therefore members should note that at any stage, the LPC may refer a decision to full Council if it deems this to be appropriate.

3.3.3 The consensus at the Working Group was that these decision making powers should be delegated to the LPC but that the operation and efficacy of the LPC should be piloted, kept under review and reported back to Council after 12 months so that Council can consider amending its decision-making powers if required.

3.4 Advisory Role

The consensus at the Working Group was that the creation of the LPC provided an opportunity to give other planning-related matters greater scrutiny. This role would allow member engagement at an earlier stage and support either Cabinet or Council (as appropriate) in their decision making. Therefore the Working Group proposes that the LPC be allocated the following areas in a non-decision making capacity:

3.4.1 **Duty to Co-operate** – the LPC can scrutinise and comment on proposals relating to the duty to co-operate with other local authorities on planning matters. A current example would be the Strategic Growth Plan.

3.4.2 **Neighbourhood Plans** – while decisions relating to Neighbourhood Plans are a function of the executive, the LPC can scrutinise and comment on proposals.

3.4.3 **Responses to Government Consultations** – while responding to Consultations is an executive function, the LPC gives the opportunity to broaden member engagement before responses are prepared.

3.4.4 **Community Infrastructure Levy** – the Peer Challenge Team recommended that the Council looks again at whether CIL is appropriate for the District and the LPC would be an appropriate place for discussions to take place – noting that the final decision sits with the executive.

3.5 Members should note that where the LPC make comments on items that fall within the executive function, the decision making body can have regard to those comments but does not need to follow them.

3.6 Other features

3.6.1 **Membership** – the LPC will have 11 members (increased from LPAC’s current membership of seven)

3.6.2 **Quorum** – the standard quorum of the Council’s committees is one quarter ($\frac{1}{4}$) of the membership. This would mean a quorum of 3. Since this committee will be making some decisions in place of full Council consensus at the Working Group was that the LPC’s quorum should be 7.

- 3.6.3 **Political Balance** – the rules on political balance will apply to the LPC as they do to other committees.
- 3.6.4 **Other members may ask to speak at LPC** – if there is a particular matter which is of interest to a member who is not a member of the LPC, they may ask to speak at the relevant LPC meeting. The decision on whether members are allowed to speak is at the discretion of the Chair.
- 3.6.5 **The LPC may invite relevant experts to speak at LPC** – if appropriate to the matter being discussed the Chair may allow relevant experts to address the LPC. Note this would be for the purposes of informing discussion only and does not replace powers that other bodies have around scrutiny such as the power to call officers/members to account.
- 3.6.6 **Members of the public may submit questions to the LPC** – Council Procedure Rule 10 which allows members of the public to submit questions to full Council shall apply to the LPC.
- 3.6.7 **Remuneration** – the Independent Remuneration Panel was held on 6 April 2018 and concluded that a Chair's allowance was appropriate for the LPC as it is for other committees. A report of the panel's findings is being submitted to Council at the same time as this report.

3.7 Constitutional changes and keeping LPC under review

- 3.7.1 The consensus at the Working Group was that the LPC's terms of reference should be incorporated into the Constitution to allow it to properly exercise the functions delegated to it. Council is asked to approve the deletion of Paragraph 10 (Local Plan Advisory Committed) of Section 5 of Part 3 of the Constitution and its replacement with the terms of reference set out in Appendix 3.
- 3.7.2 It was noted that the functioning of the LPC is likely to evolve once members gain experience of working on it. Therefore the functioning of the LPC will be piloted and reported back to Council after 12 months so that Council can consider if any changes to the Constitution are needed.

4 **CALL-IN TO PLANNING COMMITTEE**

- 4.1 In their report, the Peer Challenge Team recommended at paragraph 4.8 of their report that:
 - 4.1.1 A single stage call-in process was implemented allowing wider member call-in (i.e. not just ward members of affected wards) within 28 days of being notified of an application;
 - 4.1.2 Members be required to state a material planning reason for call-in
 - 4.1.3 Officers'/members' relatives' applications should only be referred to committee if officers are minded to approve an application;
 - 4.1.4 Only serving members' and officers' applications should be sent to committee (currently this extends to those who have left the Council in the last five years).

The Peer Challenge Team’s report also said (paragraph 2 – Key Recommendations) that *“in being able to challenge more widely, members should be careful not to exploit call-in and the Chair, advised by officers, should be able to approve or sanction call-in requests before they reach the Planning Committee stage”*.

4.2 The Working Group considered these recommendations at its meeting on 13 April 2018 and the consensus was that the call-in process be amended as follows:

Action Plan Reference	Peer Challenge Team Recommendation	Working Group’s proposed way forward
7.1	Simplified, single stage call-in process	<ul style="list-style-type: none"> - Ward member may call in an application - Neighbouring ward member may call in an application if their ward is materially impacted - Members have four weeks from being notified of the application to ask for call in - Removal of the secondary process for calling in where objections have been received
7.2	Material planning reasons required	<ul style="list-style-type: none"> - Request for call-in must be supported by material planning grounds
7.3	Relatives’ applications only go to Committee if officers are minded to approve	<ul style="list-style-type: none"> - Working Group agreed this recommendation
7.4	Only serving members’/ officers’ applications to go to committee as opposed to those who have left in the last five years.	<ul style="list-style-type: none"> - Working Group agreed this recommendation - The current constitutional position that these applications only go to committee if there are one or more objections will remain

4.3 The Working Group will keep the operation of the above call-in provisions under review. If refinements are needed (for example specific constitutional triggers on what is considered a “material planning ground”) the Working Group will return to Council with recommendations as required.

4.4 While the call-in process is being looked at, the following minor amendments are suggested to improve clarity:

4.4.1 Council applications that have no major impacts and no objections currently do not go to Committee. Amendment to clarify that objections must be *material* planning objections if they are to bring the application to Committee.

4.4.2 Wording to be amended so that it is clear that the Strategic Director of Place has the ability to refer any application or planning matter to Committee. This is the case as things stand under the delegation of powers to the Director (see the principle described in paragraph 3.3.2 above) but the current drafting could be improved to make this clear.

4.5 The call-in process is set out in the table in Paragraph 4 (Planning Committee) of Section 5 of Part 3 of the Constitution. Council is asked to authorise the Monitoring Officer to amend the Constitution to give effect to the Working Group's proposals set out in this paragraph 4.

5 OTHER CONSTITUTIONAL CHANGES

5.1 The Peer Challenge Team made a number of other recommendations in respect of the Planning Committee which were discussed by the Working Group. The consensus among the Working Group was that the following amendments should be made to the Constitution to implement the recommendations.

Action Plan Reference	Peer Challenge Team Recommendation	Relevant part of the Constitution	Working Group's proposed way forward
5.6	Give officers greater opportunity to respond to public and members' comments	Planning Code of Conduct	Paragraph 15 of the Planning Code of Conduct to be amended to include a stage in the discussion process for officers to comment on the content and themes of the debate in order to assist in framing the debate in a planning context.
5.9	Review requirement for motion at the start of a Planning Committee Debate	Planning Code of Conduct Council Procedure Rules	Paragraph 15 of the Planning Code of Conduct to be amended to include a stage <i>after</i> the debate for moving and seconding a motion Council Procedure Rules to be amended to exclude Planning Committee from the requirement to move and second motions before a debate.

5.11	Reduce the size of the Committee and allow a pool of substitutes	Council Substitution Scheme	<p>Council decided on the reduction in committee size at its meeting on 20 March 2018.</p> <p>The current substitution scheme allows a pool of substitutes based on the number of seats that each political group has on a committee. The current scheme focuses on where members are not available for an entire meeting.</p> <p>If ward members (and neighbouring ward members whose ward is impacted) are not permitted to vote on a particular application (see below) then:</p> <ul style="list-style-type: none"> - the scheme will need to be amended to accommodate absences for parts of a meeting and not just entire meetings; and - the number of substitutes will need to be increased to make this practical
5.12	Consider not allowing a ward member to sit on Planning Committee when an application in their ward is being heard.	Planning Code of Conduct	<p>The Working Group agreed that ward members (and neighbouring ward members whose wards are materially impacted) are not permitted to sit on Planning Committee for that application.</p> <p>In addition, the consensus at the Working Group was that ward members (and neighbouring ward members whose wards are materially impacted) who wanted to speak to an application should be entitled to do so and have five minutes to speak.</p>
5.14	Training for Planning Committee members should be compulsory	Planning Code of Conduct	The consensus at the Working Group was that training should be compulsory for committee members

			and substitutes. The Working Group will consider how this can be implemented and return to Council if constitutional changes are required.
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5.2 Council is asked to authorise the Monitoring Officer to amend the Constitution to give effect to the Working Group's proposals set out in the table above.

6 NEXT STEPS

6.1 As set out above the Working Group will meet monthly to monitor and guide the delivery of the action plan. Timescales for the different recommendations and priorities have been agreed by the Working Group and included in the Action Plan. An update on progress and implementation of the recommendations of the Peer Challenge will be reported back to Council in six months.

6.2 The functioning and piloting of the Local Plan Committee will be reported back to Council after twelve months of operation so the Council can consider if any changes to the Constitution are needed.