

Committee:	Constitution Sub-Committee																
Date of Meeting:	04 November 2020																
Subject:	Constitution Review – Matters affecting Development Control																
Report Author:	Service Manager, Development Management																
Contact Officer:	Sunny Sahadevan																
Implications:	<table> <tr> <td>Legal</td> <td><input checked="" type="checkbox"/></td> <td>Community Safety</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Equalities</td> <td><input type="checkbox"/></td> <td>Environment</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Financial</td> <td><input checked="" type="checkbox"/></td> <td>Consultations</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Staffing</td> <td><input checked="" type="checkbox"/></td> <td>Other</td> <td><input checked="" type="checkbox"/></td> </tr> </table>	Legal	<input checked="" type="checkbox"/>	Community Safety	<input type="checkbox"/>	Equalities	<input type="checkbox"/>	Environment	<input type="checkbox"/>	Financial	<input checked="" type="checkbox"/>	Consultations	<input checked="" type="checkbox"/>	Staffing	<input checked="" type="checkbox"/>	Other	<input checked="" type="checkbox"/>
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Wards Affected:	None																

Purpose

1. To provide the Sub-Committee with further justification and clarification around the proposed changes set out in the “Constitution Review – A Case for Change” report which was presented to the Sub-Committee on the 21st July 2020. At that meeting, Members considered that they needed a separate meeting focussed on the implications for the proposed changes affecting Development Management functions of the Council, and how that would affect the ability of Members to serve their constituents.
2. These changes are recommended because they are considered necessary for creating a framework that enhances and supports elected Members and officers to make effective, lawful and timely decisions, implemented in a transparent and accountable way, in furtherance of our objective to be a ‘Future Ready’ modern, 21st Century Council. These changes are considered to improve efficiencies, reduce unnecessary costs and delays, empower Members and positively position the Council in terms of perception, reputation, effectiveness, performance and delivery.

Recommendations

3. **That the Sub-Committee consider the following changes to the constitution for recommendation to Constitution Committee:**
 - i) **The Scheme of Delegation is amended and corrected (Part 7 (non-executive functions) which has currently been temporarily amended for Covid reasons).**
 - ii) **The “Call-In” Powers are amended (Part 7 (non-executive functions) which has currently been temporarily amended for Covid reasons).**
 - iii) **The Right to Speak procedure is amended (Part 16).**
 - iv) **The ability to refer a planning application to Full Council is reviewed (Part 4, Standing Order 68).**
 - v) **“Development Control Committee” is renamed “Development Management Committee” and the “Planning Manager” is replaced with the “Head of Development Management or its equivalent (throughout the constitution).**

- vi) **The introduction of new regular and formal meetings, namely “Pre-application briefing/forum” and “Pre-Committee briefings” (Part 16).**
- vii) **The provision for an item to be deferred for a site visit is included (Part 16).**

Background

3. The Case for Change is part of the Council’s Future Ready Programme which sets out the vision of enabling the Council becoming a highly productive and efficient organisation. This includes reviewing costly processes as we continue to adjust to the rigours presented by the Emergency Budget and moving the organisation towards a new Target Operating Model (TOM). This includes reviewing the current Council Constitution with a particular focus on the delivery of effective, timely and statutorily/financially robust formal and devolved decision making, which holds the confidence of elected Members and provides transparency and accountability for members of the public.
4. The Case for Change includes a number of proposals that could affect the Development Management parts of the Constitution. The Development Management service within the Council is in the process of being reviewed and transformed in line with the Council’s Future Ready Programme. It was also subject to a Local Government Association/Planning Advisory Service Peer Review, which took place in November 2019. The review resulted in a number of recommendations which have already been actioned or are now being actioned by the service. The Peer Review Report and Recommendations are set out in full in Appendix 2 of this report. The recommendations also included potential changes to the wider organisation, including changes to the Council’s Constitution. These recommendations are now presented through the Case for Change. Whilst most of the recommendations within this report relate to the proposed changes/amendments and additions to the Council’s adopted constitution, there are some suggested recommendations which are purely procedural or administrative that do not need to amend the constitution. These have been included in this report to provide a useful context to the Council’s overall strategy and assist Members in appreciating better how the various recommended constitutional changes sit with other Council transformational strands. A summary has been provided at the end of each section which identifies which recommendations are constitutional and which are procedural. The summary will also identify the relevant part of the constitution that is affected for reference purposes.

Report

5. The parts of the Constitution that affects the Development Control function of the Council together with procedural changes, that officers are now recommending potential amendments include the following;
 - The Scheme of Delegation
 - “Call-in” powers
 - The Right to Speak procedure
 - Referral to Full Council
 - Renaming Committee
 - Additional Meetings

- DC Members Site-Visits

6. Each of these proposals are set out below.

The Scheme of Delegation

7. The Council, as a Local Planning Authority, has a statutory duty to determine planning applications submitted to it for determination. Under the Council's existing Constitution delegated authority is granted to officers to deal with more of the "straight-forward" and non-contentious applications, such as house-holder and minor applications. Those of a more contentious or complex nature are determined at Development Control Committee (DCC).
8. Those applications that follow the DCC route for determination involve a lot more resourcing for the Council to process and adds to delay. The Transformation Team at Luton have undertaken a review of the difference in cost and resourcing of determining a typical application at DCC compared to determining a similar or same application using delegated powers. Their findings have established that the on average the cost to the Council for determining an application through the delegated process is £200 per application, whilst the cost to take it through the Committee process is £800 per application.
9. Given this, it is clear that there is a significant additional cost to the Council for dealing with planning applications through the DCC process. Many Councils have recognised the additional costs involved and have amended their SOD to reflect the need to try and deal with more business through the delegated route. Therefore there is a view that the Council's own SOD needs to be reviewed to ensure that DCC is afforded sufficient time to concentrate mainly on strategic/controversial applications and at the same time save on resources and speed up business.
10. Currently, Committee considers a large body of applications that do not fall into the category of contentious or complex applications; including applications that have been recommended for refusal. In comparison, some Council's do not bring applications to Committee should it be a "non-major" application, which has also not been called-in and has been recommended for refusal. There was one occasion recently at Luton where an application for a MOT station, which was clearly contrary to policy, was recommended for refusal, and had a large number of objections and no letters of support was considered at Committee. The Committee process also included a site visit for Members prior to the meeting. The item took 30 minutes to determine at DCC, which included time for the applicant to exercise his right to speak, which they fully exercised. The application was eventually refused. The same final outcome (i.e. refusing the application) would have been the same outcome if officers were allowed to determine the application under delegated powers.
11. A further burden to the service in bringing non-major applications to Committee, that are recommended for refusal, is that by the time the Committee report is published (7 days in advance of Committee), often the applicants will use this period to make amendments to their scheme in the hope of addressing the reasons for refusal which they have now become aware of. This then necessitates the withdrawal of the scheme from the agenda as further assessment and consultation needs to be undertaken before preparing a new report. The scheme may still be unacceptable following that process, but the cycle can then repeat.
12. The scheme of delegation also requires applications to be returned to Committee for consideration should they be modified after granting permission. Particularly with large

significant schemes, it is quite often the case that following grant of permission there may be some minor amendments that will be required to either the approved drawings, the conditions or the agreed S106 (legal agreement). With other Council's these matters, if they are of a minor nature, are dealt with under delegated authority. Currently at Luton, these applications have to be returned to Committee for their consideration. There was a recent example of a S106 being considered at Committee because of a proposal to delete a few words from the original drafting. The consequences of the amendment were both minor and acceptable, but took up Committee time, where it was eventually approved.

13. Following the Covid 19 pandemic lockdown, and the need to keep business moving as much as possible, officers recognised the added difficulties associated with dealing with planning applications at DCC which could now only operate in a "virtual" medium with less opportunity for Member and public participation than the situation before lockdown. In recognition of this, officers proposed for the Council to adopt a temporary emergency SOD. This was presented to DCC on the 22nd April 2020. The details of the meeting is found here;

<https://democracy.luton.gov.uk/cm5public/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/5557/Committee/1111/Default.aspx>

14. The emergency SOD sought to reduce the volume of applications dealt with at DCC. In summary, the following category of applications would now only need to be dealt with at DCC compared to the pre-existing situation. The key changes can be summarised as follows;

- Applications on sites over 0.5ha or the erection of 10 or more dwellings.
- Applications involving more than 1000m² of a change of use 1000m² floorspace
- Applications involving more than 15 objections to the officer recommendation (as opposed to the previous threshold of 4)

Delegated authority was also granted to officers to deal with the following category of applications;

- Refusal of applications contrary to the Development Plan
- Approval of variation of existing planning permissions (Section 73 applications)
- Enter into S106 legal obligations or vary previous obligations.
- Approve reserved matters applications

15. The emergency SOD was agreed at DCC and was initially granted for a 4 month period. Members considered extending the SOD again in their meeting on the 26th August 2020. The link to that meeting is provided here;

<https://democracy.luton.gov.uk/cm5public/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/5717/Committee/1111/Default.aspx>

16. Subject to the continued agreement with Members the emergency SOD is now extended until the 1st May 2021. In agreeing to extend the original emergency SOD, it is significant that Members also agreed to increase the scope even further and increased the scope of delegated powers to include the following;

- Temporary structures and permissions.

- Departure from the Development Plan no longer being a barrier to refusing applications under delegated authority.

17. The experience of introducing the emergency SOD has largely been considered positive. Committee meetings are much more focussed with a more manageable number of applications and reports to consider. Prior to lockdown, the number of applications typically considered at DCC was in the regions of 10-12 items, and the meetings lasting more than 3 hours in some cases. The average number of items has reduced by a half. This has allowed Members more scope for detailed and focussed discussion on the applications that they do consider and to ensure that their decisions are more focused on the quality of their decisions and the quality of the outcomes. Their agreement to not only extend the emergency SOD in August but to also allow for further delegated authority is a good indication of how positively the changes have been received.
18. A “by-product” of the changes in the SOD has resulted in more resources being available for officers to deal with business. At a time when other Local Planning Authorities are struggling to maintain performance during the lockdown, Luton’s performance has actually and measurably improved. A good indication of performance is the speed with which the 3 categories (Major, Minor and “Other”) of planning applications are dealt with within the statutory time period. The table below compares Luton’s performance last year (April 2019 to March 2020) compared to the first quarter this year (April to June 2020). The emergency SOD was introduced on the 22nd April 2020. The improved performance could be as a result of better allocation of resources for the service following the changes to the SOD and reducing the number of applications that now have to be considered at DCC.

	Performance (April 2019 to March 2020)	Performance (April 2020 to June 2020)
MAJOR	88.89%	100%
MINOR	94.92%	84.48%
OTHER	93.29%	96.32%

19. Apart from the endorsement of the emergency SOD from DCC, another indication of its success is that there has been no incidents of complaints or criticisms from members of the public or applicants since its introduction.
20. Officers also took the opportunity to review the existing SOD to make amendments to matters that needed minor correcting and also types of applications (such a Prior Approvals and Discharge of Conditions applications) not previously included. Any review of the existing SOD may need to include these corrections apart from reviewing the thresholds for delegation.

Summary

What is recommended?	Is this a constitutional change? And if so which part of constitution is affected?
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The Scheme of Delegation is amended and corrected.	Yes, Part 7 (non-executive functions) which has currently been temporarily amended for Covid reasons.
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Call-In Powers

21. Call-in powers are considered necessary to help facilitate the democratic dimensions of the planning system and is generally supported. However, there may be a need to review the current practice in Luton, and consider whether the way it currently operates is in the best interests of the organisation and whether it needs to be modified. Currently the constitution allows a “call-in” of a planning application that would be otherwise delegated to officers. The principle is supported, as some applications may have significant or controversial dimensions which need greater consideration and assessment at DCC. The call-in powers as they operate in Luton can be invoked by any Member, at any time and without providing a reason for the “call-in” and the “call-in” mechanism does not need to be for a valid planning reason. This however sometimes results in a significant proportion of applications being considered at Committee that are of a relatively minor nature and which take up time and resources that could have been spent on determining more strategic applications. On some occasions, the Member that called in the application does not attend nor speak at Committee when the application is considered. Therefore there are no further consequences arising from that personal and unilateral decision other than additional work created for DCC Members and officers accommodating that call-in. In addition, this also impacts upon the applicants awaiting their delayed decision and has a negative impact upon the Council’s resources in general. The current practice can also be criticised for not being open and transparent and could generate accusations about impartiality or accusations around probity.
22. At some Council’s, “call-ins” are only exercised where a Member is seconded by another Member (usually a Member on the DC Committee), and where that call-in occurs within a defined period; usually 14 days of the application being publicised, and a reason for the “call-in” is provided in writing. For instance Corby Borough Council’s Constitution states the following in relation to their “call-in” powers;

“The application to be referred to Committee when so requested by any Member with signed support of one member of Development Control Committee (not substitute) within 14 days of the application being registered (Officers having published the application within 5 days of receipt) and made in writing with valid planning reasons, ideally on the attached pro forma”.

In the context of other Council’s, the current call-in powers may benefit from a review to consider whether a better balance can be achieved in still being able to allow Members the ability to serve their constituents whilst also maintaining a Corporate focus on what is the most suitable for the organisation as a whole.

Summary

What is recommended?	Is this a constitutional change? And if so which part of constitution is affected?
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The Call-In Powers are amended.	Yes, Part 7 (non-executive functions) which has currently been temporarily amended for Covid reasons.
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The Right To Speak Procedure

23. The Right To Speak (RTS) procedure is an important part of the DCC process to consider and determine applications. It is recognised that this plays an important role in the democratic process and informs DCC and allows them to ask questions of clarification of objectors as well as supports. It also allows Ward Councillors an opportunity to address DCC. However, as part of the overall review of the Development Management process, this is another area which has been identified for potential improvements.
24. Currently, all applicants, objectors and supporters have a right to speak at Committee regardless of the recommendation. Up to 5 minutes is allowed for the RTS. This has resulted on occasions where an application is acceptable in terms of planning policy, has been recommended for approval and there are no objections or objectors at Committee, but the right to speak for the applicant remains. In such situations, the applicant has occasionally used their full allotted 5 minutes expressing their gratitude for the recommendation and expressing their thanks to the officers- rather than providing anything useful for the Committee to consider that is not already covered in the report.
25. Other Council's only allow a RTS to applicants if the application has been recommended for refusal. In addition, the period allowed for speaking for everyone under the RTS is reduced to no more than 3 minutes. This is a recommendation from the Peer Review team that observed DCC in action when they undertook their review.
26. In addition, currently, the Constitution imposes a time restriction on speaking on the applicants and members of the public, but not on Ward Councillors. Usually Ward Councillors that have spoken at Committee have been reasonable in the amount of time they have taken up to air their views. However, there have been occasions where balance between the overall time utilised by the Ward Councillor and considering the item in a reasonable amount of time without affecting the time DCC has to consider other items may need to be re-evaluated. A review of this allowance should be considered and whether an unrestricted time allowance is in the best interests of the Council as a whole.
27. As part of the emergency measures that officers sought and secured from DCC to deal with business during the Covid 19 pandemic lockdown, reports were taken seeking temporary amendments to the RTS. However, these changes were sought to allow the process to operate within the technological constraints presented by the virtual platform used to deliver DCC during this period, rather than seeking wholesale or more general changes the pre-existing RTS procedures, which this report now seeks.

Summary

What is recommended?	Is this a constitutional change? And if so which part of constitution is affected?
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The Right to Speak procedure is amended.	Yes, Part 16.
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Referral to Full Council

28. Currently planning applications in the process of being considered at DCC can be referred up to Full Council by a Committee Member if the motion is seconded. The risk is that if the motion is not agreed at Full Council then the application is referred back down to DCC. There is a risk that this process could be caught in a perpetual loop. There was a risk of this happening with the recent determination of the Venue 360 planning application, where a Member enacted this Constitutional ability to propose a motion to have the application referred up to Full Council for approval. The motion was seconded. At Full Council it could not be agreed to approve the motion, and therefore the application was referred back down to DC Committee. The application was eventually decided at DCC, however it identifies a weakness in the current Constitution that may need to be reviewed. The Constitutional “ambiguity” over which Committee ultimately can make the final decision is an issue that is currently under consideration by the Court of Appeal, given opponents of the Venue 360 application (and now permission) have brought a legal challenge questioning whether the Council had erred constitutionally in the process followed. An opportunity to review this part of the Constitution would therefore seem advantageous.

Summary

What is recommended?	Is this a constitutional change? And if so which part of constitution is affected?
The ability to refer a planning application to Full Council is reviewed.	Yes, Part 4 – SO 68. Please note that this could affect all Regularity Committees and not just DCC.

Renaming Committee

29. Most Councils have now replaced the terminology “Development Control” with “Development Management” to better describe the purpose and role of the Planning process and to bring it into line with the ethos Central Government is advocating. The Council have accordingly updated the name of the service itself however the name of the Committee lags behind. This was an early recommendation of the Peer Review team.
30. Similarly, the constitution refers to “Planning Manager” however there is currently no one in post under that title. A better reference should be “Head of Development Management or its equivalent”.

Summary

What is recommended?	Is this a constitutional change? And if so which part of constitution is affected?
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DCC is renamed Development Management Committee and “Planning Manager” is replaced with the “Head of Development Management or its equivalent”.	Yes, the references appear throughout the constitution.
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Additional meetings

31. One of the recommendations from the Peer Review Team was that whilst they advocated various changes to reduce the involvement of DCC in the planning process (outlined above), they did recommend that other new processes should be introduced that helped engage Members in the planning process in alternative ways. Officers have already acted on this recommendation and have set up the following;

- The Major Sites Schedule – which is distributed monthly and provides an update to Members on all the current “live” planning applications currently under consideration.
- Greater consultation of Ward Councillors – they are now directly consulted on all telecommunication planning applications, even though there is currently no statutory requirement to do so.
- A DCC Members and Ward Councillors are invited to pre-application briefings on major and strategic applications. This is currently provided on an informal and ad hoc basis but some Councils have introduced this engagement as part of their Constitution. Consideration regarding this could be included as part of the Constitutional Review.
- Pre-DCC briefing meeting – this is a briefing meeting provided ahead of the main DCC meeting. This provides an opportunity for Members to seek clarification and offer comments to officers. Whilst respecting the requirements around pre-determination, this practice has ensured that the actual DCC meetings have run much more smoothly than used to be the case, with very few deferments. Again, this engagement is on an ad hoc basis but could be considered as part of any Constitutional Review.

Summary

What is recommended?	Is this a constitutional change? And if so which part of constitution is affected?
The introduction of new regular and formal meetings for members and officers; 1) Pre-application briefing/forum for members 2) Pre-committee briefing	Yes, Part 16.

Additional consultation and notification for members on planning applications	No, these are procedural changes and included in this report for members to note.
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DCC Members Site Visits

32. A review of the DCC Site visits was not originally included as part of the report for A Case for Change. However, it has become apparent at a recent DCC meeting that this aspect should be included as part of any review. Officers recognise that a separate report regarding this should be brought to DCC first for their agreement before including as part of the Constitutional Review, and such a report will be considered by DCC at their meeting on the 28th October 2020. However, as a purely discussion point for the Sub-Committee it has also been included in this report.
33. There currently is no provision in the Constitution setting out how Members site visits should operate. However, it may be useful for the Council to set this out for the purposes of clarity of procedure.
34. Currently, under DCC protocol, any Member can defer an item from the agenda for a formal site visit. This happened recently at a DCC meeting, and there was vocal disagreement between the Members whether the item should be deferred and whether a site visit was needed. The Council's planning lawyer advised Members that whilst there was nothing in the Constitution regarding this, the previously established protocol at DCC was that any Member could defer the item in this manner. The site visit took place with only the local ward councillor attending with officers, there is of course nothing to stop individual ward councillor's from undertaking their own site visit. There is therefore a procedural gap that increases the use of resource and delays decision making
35. An alternative Constitutional arrangement could be to have an agreed procedure in place. The procedure could be that Members can only agree a deferment for a Member site visit where there are accessibility issues (i.e. that the site cannot be accessed without the involvement of the applicants/owners. Such a motion at DCC would need to be seconded and put to the vote. If a majority is in favour of a visit, then the item can be deferred until the site visit is undertaken. Members are also expected to undertake their own site visits to sites that are publically accessible ahead of the DCC meeting before the item is considered. The agenda is published 10 in advance of the meeting and therefore should afford enough time to undertake the visit. Having this set out in the Constitution will have significant saving on resources and also speed up the DCC decision making process. Officers are currently preparing to present an item on this issue for Members to resolve at DCC at their meeting on the 28th October 2020.
36. In summary, it is considered that all of the proposed changes to the Constitution outlined above are considered worthy of putting forwarded for further discussion and agreement. It is considered these proposals are fully aligned with the Council's new Target Operating Model and would allow for the current constitution to become more agile, efficient and accountable in line with the Council's corporate direction of travel.

Summary

What is recommended?	Is this a constitutional change? And if so which part of constitution is affected?
That the provision for an item to be deferred for a site visit is included.	Yes, Part 16 will need to be amended for this inclusion. The precise procedure by which the provision is invoked can be left to DCC to determine and adopt as part of their own protocol.

Proposal/Options

37. That members provide a steer on how they would like to amend the relevant parts of the constitution in line with the recommendations and options set out above and how they wish to approach the detail of the Case for Change.

Appendix

Appendix A - Planning Peer Challenge Final report

List of Background Papers - Local Government Act 1972, Section 100D

- i) National Planning Policy Framework (NPPF, or the Framework)
- ii) National Planning Practice Guidance (NPPG)
- iii) Coronavirus Act 2020 (the CV19 Act)
- iv) The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (the FLAMR 2020)
- v) Ministry of Housing Communities and Local Government (MHCLG): Chief Planners Letter (dated March 2020)
- vi) Constitution of Luton Borough Council (CLBC): Part 7 – Scheme of Delegation to Officers (Non-Executive Functions)
- vii) Probity in planning: Advice for councillors and officers making planning decisions – Planning Advisory Service Dec 2019.

38.

Implications

Item	Details	Clearance Agreed By	Dated
Legal	The proposed recommendations will have legal and constitutional implications		
Finance	None		
Equalities	None		
Environment	None		
Community Safety	None		
Staffing	None		
Consultations	None		
Other			