

Suggested Changes to the ECDC Constitution – Planning Policy Related Decisions

Context and summary of recommendation

This note is provided in order to recommend changes to the constitution so that ‘planning policy’ related decisions can be more effectively and efficiently taken.

At present, most decisions requiring a formal Member decision are taken at Full Council. The recommendations in this note are to delegate some of those decisions to Finance and Assets Committee.

Present situation

Part 3A (Council), section 3.2 states, that only Council can “approve or adopt key policies and procedures as defined below”, and within such a list are:

- Development Plan Documents (Local Plan);
- Local Development Scheme (LDS);
- Statement of Community Involvement (SCI); and
- Supplementary Planning Documents (SPDs);

Para 3.2 further includes a ‘catch all’ bullet point which states:

- “Other key policy documents which the law requires are adopted by full Council...”

At 3.4 (Other Matters), Part 3A goes on to state that Council functions also include:

“(vii) Make a neighbourhood plan or neighbourhood development order (‘make’ meaning adopt to all intents and purposes).”

Part 3B (Policy Committees), at section II para 3.2, the ToR for Finance and Assets Committee states that it has responsibility:

“To approve and monitor performance against the Service Delivery Plans for...Strategic Planning”.

In addition, its ToR has a number of other items of relevance to this note, including:

“3.10 In respect of Neighbourhood Planning, to receive a report and determine:

- A Neighbourhood Area, where the Neighbourhood Area proposed does not match the parish boundary and objections to the proposed boundary are received
- if (other than minor non-consequential matters) the examiners recommendations are not accepted in full or if the Council is proposing further modifications (in addition to any modifications recommended by the examiner)”

“3.13 To approve key policies and procedures as defined within the specific Service Delivery Plans (as defined in paragraph 3.2) and not reserved for full Council, including...Planning Policy”

Section 5 (Delegation to Officers) then sets out a wide range of delegations to Officers in relation to various stages of Neighbourhood Planning responsibilities.

Part 3C (Regulatory Committees), at 3.7, states that the ToR for Planning Committee includes:

“To undertake the functions of the Council under Part 2 of the Planning and Compulsory Purchase Act 2004 (local development), section 14A (‘Register of Land’), including preparation of a Brownfield Land Register as required by The Town and Country Planning (Brownfield Land Register) Regulations 2017.”

Para 5.9 then delegates the publication of such a brownfield register to officers, as follows:

“Town and Country Planning (Brownfield Land Register) Regulations 2017 Publication of sites in Part 1 of a Brownfield Land Register - Director Operations or Planning Manager”

Proposed Changes

Broadly speaking, only limited changes are deemed appropriate and necessary. Indeed, legislation prevents Full Council from delegating responsibility for all planning policy related matters.

Proposed Changes to 3A (Full Council)

In terms of what Full Council MUST determine, for the purpose of this note, this is limited to Development Plan Documents (Local Plan). This therefore needs retaining in para 3.2. The legislation also probably extends to the ‘making’ of Neighbourhood Plans, by virtue of a Neighbourhood Plan being legally part of the ‘development plan’ for an area, though note that a Neighbourhood Plan is not legally a Development Plan Document, so perhaps a grey area. **Nevertheless, it is recommended that 3A, para 3.4, in relation to the making of Neighbourhood Plans is retained as at present.**

Turning to the other three relevant items listed in 3A, para 3.2 (namely: LDS, SCI and SPDs), none of these must go to Full Council - they can be delegated elsewhere.

The LDS is the legal trigger to commence a Local Plan review; a review may not commence until an LDS states so. In many Cabinet based councils, this decision is taken at a Cabinet meeting. **However, in ECDC (i.e. no Cabinet system) it is recommended that this function continues to be reserved to Full Council due to the considerable status and resource implications of confirming an LDS (i.e. it confirms a review of the Local Plan will proceed).**

The SCI is a statement setting out how the Council will consult on planning matters. It is legally required to be kept up to date, but is somewhat technical. **It is recommended that the SCI be delegated to Finance and Assets Committee, and removed from 3A, para 3.2.**

SPDs are a mix of guidance and supporting policy, which legally must conform with policy in a Development Plan Document (Local Plan). An SPD cannot allocate land for development, for example. It is rare nationally for such documents, which are often technical in nature, to be reserved for Full Council determination. **It is therefore recommended they be delegated to Finance and Assets Committee, and removed from 3A, para 3.2.**

Proposed Changes to 3B (Policy Committees)

It is recommended that Finance and Assets Committee duties are enhanced, in line with the above recommendations.

Proposed Changes to 3C (Regulatory Committees)

No changes are considered necessary

Optional Recommendation

Whilst a Development Plan Document (Local Plan) must, by legislation, be reserved to Full Council, this only is reserved to the adoption of the document. The option exists, therefore, for earlier draft stages (e.g. approval of a draft Local Plan for the purpose of consultation) to be delegated elsewhere (e.g. to Finance and Assets Committee).

If this option is to be explored, **it is recommended that such delegation is limited only to any 'Regulation 18' consultation stages (i.e. the early rounds of consultation), whereas the 'Regulation 19' consultation stage is retained by Full Council.** Regulation 19 stage is the final consultation draft, but importantly is (by law) the same version which the Council then goes on to submit for its independent examination.

By way of example, Cambridgeshire County Council delegates all stages, including regulation 19 stage, to a committee for decision, and only reserves adoption to Full Council. Peterborough City Council (and many other cabinet based councils) tend to delegate Regulation 18 stages to Cabinet, but Regulation 19 and adoption to Full Council.