

10.15 Head of Planning and Building Control

10.15.xx To carry out all the functions of the Council as local planning authority, **except where this Constitution limits those powers**, including, but not limited to, the processing of all planning applications, appeals and pre-application enquiries; and the investigation and decision to take or not take enforcement action¹.

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10.15.1 To determine ~~planning, Listed Building, reserved matters and advertisement~~ all applications submitted under the Acts or secondary legislation listed in footnote 2² applications **except where** the application:

Commented [RF1]: This paragraph introduces a "catch all" to ensure that detailed administrative processes and anything missing from the Constitution is covered to protect the Council from challenge in officers going about the detailed work of the Planning Service.

Commented [RF2]: This amended wording ensures that all relevant types of application are covered beyond those previously listed. As it is a long list, they are moved to a footnote.

(a) is an outline or full ~~permission application~~ for a major development as defined in the Town and Country Planning (Development Management Procedure) Order (England) 2015 as amended, except:

- (i) applications which are for major development by virtue of the extent of the site area only ~~(which remain delegated)~~;
- (ii) where the application is a reserved matters application pursuant to a previous major application; ~~which, itself has been approved (which remain delegated); and~~
- (iii) where the application is a major application which, ~~having considered the requirements of the development plan and all other relevant material planning considerations,~~ the Head of Planning and Building Control recommends to be refused ~~in consultation with~~

¹ For the avoidance of doubt all of the functions of the Council as Local Planning Authority means any functions or activities that are beneficial to securing the proper planning of the authority area. This includes providing a development management service, the provision of a planning enforcement service and provision of a planning policy service to advise on the determination of planning applications, prepare policy and guidance (as set out in other sections of this Constitution) and provide specialist advice on a number of subjects including sustainability, urban design, landscaping and heritage.

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² All applications submitted under relevant town planning legislation, inter alia the Town and Country Planning Act 1990 (as amended), the Planning (Listed Building and Conservation Areas) Act 1990 (as amended), the Planning (Hazardous Substances) Act 1990 (as amended), Part 8 of the Anti-social Behaviour Act 2003, the Planning Act 2008 (as amended), the Environment Act 2021 the Levelling Up and Regeneration Act 2023 and secondary legislation related to these Acts)

and has notified the ~~Chairman~~Chair of the Development Management Committee of the intended decision.

(b) is a non-material or minor material amendment application (variation) pursuant to a previous major application except where the Head of Planning and Building Control has consulted the ~~Chairman~~Chair of the Development Management Committee that the matter can be dealt with as a delegated decision;

(c) is an application for planning permission or Listed Building Consent by a Member of the council;

(d) is an application other than an application to discharge a condition or make a non-material minor amendment and is by an officer of the council employed in the planning service area;

(e) is an application for planning permission or Listed Building Consent by an officer of the council, other than one employed in the planning service area and proposes development other than householder development;

(f) (f) is an application other than an application to discharge a condition or make a non-material minor amendment or one for prior approval ~~one~~ where a Member considers that Delegated Powers should not be exercised by the Head of Planning and Building Control and the Chair of Development Management Committee agrees that a delegated decision is not appropriate and the Member follows the procedure at a-c. below. The procedure is:

- a. The Member must submit a completed application referral form within 28 days of the application being notified or within 21 days of a revised notification being circulated to Ward Members or the Town and Parish Council.
- b. The application referral form must state the relevant valid planning reasons why the decision should not be delegated and whether the referral relates to a decision to approve or refuse the application.
- c. Where the Chair agrees that a delegated decision is not appropriate, the Member is expected to speak at

Commented [RF3]: The majority of these changes simplify wording or provide clarity.

The process of discussion with the Chair prior to making delegated decisions on major applications for refusal and variations to approved majors is amended. There is a risk that the previous wording of "consulted" suggests a process meeting certain legal requirements whereas in reality the Chair is notified of the intended decision.

Commented [RF4]: These additions clarify and amend what applications should go to DMC in these circumstances. The existing wording does not differentiate (except for householder applications).

The amendments provide for different types of applications to require DMC determination for the different groups mentioned, based on the risk of a perception of a conflict of interest.

It always requires the "main permission" to be taken by DMC but allows delegated decision on detailed matters of conditions, some changes to permissions or confirmation of compliance with statutory requirements.

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Commented [RF5]: This change takes a similar approach to the change above of allowing delegated decisions on technical or secondary applications. Prior approval applications often have a deadline by which, if a refusal hasn't been issued, permission is automatically granted. The timescales of the deadlines means that requiring these to be determined by DMC would often mean the deadline is missed.

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Development Management Committee in support of their referral having followed the procedure set out in 6.5.2.

d. Following receipt of a referral form as set out in a. and b. and prior to a recommendation being made, the Head of Planning and Building Control shall brief the Chair of Development Management Committee and seek their confirmation as to whether a delegated decision is appropriate.

For the avoidance of doubt, a Member may withdraw their referral at any time in advance of the application being placed on an agenda for consideration by the Development Management Committee, which shall allow the application to be determined under delegated powers (unless another section of this Constitution requires a decision by Development Management Committee).

~~In which case the Member must contact the ChairmanChair of the Development Management Committee to seek referral, submitting a completed application referral request form stating the reasons why the decision should not be delegated. The decision remains delegated until the DM ChairmanChair confirms the referral request;~~

~~(g) requires reference to the Secretary of State;~~

~~(h) is for approval and requires linking to an agreement under Section 106 of the Town and Country Planning Act (s106 Agreement) (except applications which propose a variation to an existing s106 Agreement, or a s106 Agreement which is related to a development other than a major development and, in those cases, subject to consultation with the ChairmanChair of the Development Management Committee; and~~

(i) is for development by or on behalf of the council, or which relates to a site in which it has a landowning interest, to which an objection has been made which is material to the development proposed.

Commented [RF6]: This sets out the process around "Member call-ins" more clearly and aligns the Constitution to current practice.

It introduces a deadline for Members to request a call-in which is considered necessary to allow work to be planned effectively with the decision route known by a certain point in the process.

The deadline has been set as after the date when comments are requested from the public, Members and Town and Parish Councils to allow Members to continue to gauge public interest before making a decision to request a call-in or not.

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Commented [RF7]: Not currently in constitution so if Members refers and then amendments made or following discussions wishes to withdraw referral not currently possible.

Commented [RF8]: This is not considered to be a sound reason to need DMC consideration. Almost all categories for a referral to the SoS relate to major developments, or developments by a Council, in any case.

Only one recent application has gone to DMC on this basis (LBC alterations to Wallfields) which would have gone under (i) anyway.

Commented [RF9]: It is proposed to delete this requirement.

The current wording requires the following:

1. All applications which require a new legal agreement and are major developments to be determined by DMC.
2. Applications which vary an existing legal agreement are exempt and can be determined under delegated powers.
3. Applications which require a legal agreement and are not major applications require discussion with the Chair of DMC to determine whether a DMC decision is appropriate.

The first requirement is already covered by existing wording of 10.15.1 (a) except for majors by site area only and reserved matters applications. The same logic which applies to exempting majors by site area and reserved matters applications from DMC decision under 10.15.1 (a) applies to this requirement too.

The second requirement specifies that applications requiring amendments to existing legal agreements can be determined under delegated powers, so is not required if the rest of the paragraph is deleted as decisions are delegated unless the Constitution says otherwise.

Turning to the third requirement, the vast majority of legal agreements relate to major developments, but smaller proposals sometimes require legal agreements for technical reasons. Some examples are where two households propose extensions next to each other which would be unacceptable if only one were built, or where it is necessary to secure certain on-site biodiversity net gains. These are applications which are unlikely to be of wider public interest and which, apart from this paragraph, would not trigger a DMC decision and so the need for a legal agreement meaning a DMC decision is ...

- 10.15.2 To take all actions as necessary with regard to the receipt, validation, consultation and administration of all application types.
- 10.15.3 To take all actions as necessary with regard to the administration and submission of the council's case, including any review, alteration, amendment or withdrawal of that case, following the appeal of a planning decision, that has been made under Delegated Powers.
- ~~10.15.4 To take all actions as necessary with regard to the administration and submission of the council's case, including any review, alteration, amendment or withdrawal of that case, in consultation with the ChairmanChair of the Development Management Committee and a minimum of one local Ward Member (where substantive change is proposed), following the appeal of a planning decision that has been made by the Development Management Committee.~~
- 10.15.5 To take all actions to negotiate, vary and finalise the detail of legal agreements under section 106 of the Town and Country Planning Act 1990 as amended, following authorisation of the heads of terms of such agreements by the Development Management Committee (where relevant) on applications requiring their decision, or following authorisation as a delegated decision, or following the submission of a planning appeal.
- ~~10.15.xx To authorise the spending of collected s106 monies following notification to the Executive Member for Planning and Growth.~~
- 10.15.6 To take planning enforcement action including registering, investigating and negotiating on alleged breaches of planning control and taking decisions as to whether or not it is expedient to take enforcement action where a breach of planning control has occurred and to take enforcement action both informally and formally, including the serving or withdrawal of notices. ~~in relation to legislation within the remit of the Area of Responsibility and in particular as detailed below:~~

Commented [RF10]: Currently, if the Council proposes to change the ground on which a planning appeal will be fought for a DMC case, there must be a discussion with the Chair of DMC and at least one Ward Councillor.

It is proposed to delete this requirement so that appeals on DMC cases are dealt with in the same way as appeals on delegated cases.

Planning appeals are often highly technical and bear considerable risk of financial or reputational cost for the Council and so the detailed matters on which to defend a decision is considered to be an appropriate decision for the Head of Planning and Building Control.

Additionally, for certain appeal procedures, the Officer(s) would be giving evidence or advising the Planning Inspector as professional planning officers and so must be able to fully and professionally support the grounds for appeal.

Commented [RF11]: These additions address existing omissions where legal agreements may be required on non-DMC cases.

Commented [RF12]: This addition addresses a current omission from the Constitution.

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- (a) ~~to serve Planning Contravention Notices where it appears that a contravention of planning control has taken place;~~
- (b) ~~to issue Stop Notices, Temporary Stop Notices, Enforcement Notices, Enforcement Orders and Advert Removal Notices to issue Breach of Condition Notices and Notices under Section 215 of the Town and Country Planning Act 1990 as amended; and~~
- (c) ~~in cases of urgency and subject to consultation with the ChairmanChair or Vice ChairmanChair of the Development Management Committee, to arrange for the serving of urgent works notices, repairs notices and Directions under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, and directions relating to unlisted buildings in conservation areas.~~

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10.15.xx ~~In consultation with the Head of Legal and Democratic Services, to initiate prosecutions and the taking of direct action or other enforcement action where Notices have not been complied with, where considered necessary to secure the good planning of the area.~~

Commented [RF13]: This section of the Constitution has been amended to more clearly set out authority to undertake planning Enforcement work.

Additionally the list of notices was not comprehensive and so the service of all planning enforcement notices has been covered in this proposed wording.

Commented [RF14]: This section deals with Article 4 Directions (removing permitted development rights) and specific types of Notice and requires, except where serving them is urgent, consultation with the Chair or Vice Chair of DMC.

Article 4 Directions have been moved to a new paragraph as this paragraph generally deals with Enforcement and they could be proposed for other reasons.

The two notices specified are, in the case of Urgent Works Notices, by definition urgent and so would be delegated and in the case of repairs notices a highly technical built heritage analysis and so delegated decision making is considered appropriate.

Commented [RF15]: This addition addresses a current omission in the Constitution regarding the ability to take action following a Notice being confirmed and not complied with.

10.15.7 In consultation with the Head of Legal and Democratic Services, to apply for injunctions in appropriate cases where there are any breaches of planning and/or building control, Tree Preservation Orders, or Listed Building and Conservation legislation where it is felt that contravention of planning and/or building control has taken place, and to give any undertakings in damages in such cases.

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10.15.8 To determine whether or not it is expedient to take enforcement action where a breach of planning control has occurred, save where a Member requests the matter be referred to the DM Committee and, in those cases with the agreement of the ~~ChairmanChair~~ of the DM Committee.

10.15.xa To make Directions under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), where it is considered to be an urgent matter and directions relating to unlisted buildings in conservation areas.

10.15.9 To make Tree Preservation Orders, and to determine applications for consent for the cutting down, topping or lopping of trees applications under the Town and Country Planning Act 1990 (as amended) and those submitted under the Hedgerow regulations 1997, and exercise the powers and duties relating to high hedges under the Anti-social Behaviour Act 2003.

10.15.10 To exercise the council's powers under Section 70(a) of the Town and Country Planning Act 1990, by declining to determine an application for planning permission for the development of any land where, within a period of two years, ending with the date on which the application is received, the Secretary of State has refused a similar application referred to him or her under Section 77, or has dismissed an appeal against the refusal of a similar application, and where, in the opinion of the Head of Planning and Building Control, there has been no significant change since the refusal or dismissal in the Development Plan or in any other material considerations.

10.15.11 The consideration, approval and payment of grants in respect of works to Listed Buildings, Heritage Assets at Risk, Undesignated Heritage Assets and with regard to Conservation Areas.

10.15.12 To exercise the council's planning powers for control of demolition.

10.15.13 To approve or reject plans submitted as non-material amendments to planning applications other than major planning applications.

10.15.14 To determine applications for certificates of appropriate alternative development.

Commented [RF16]: This addition replaces the text in 10.15.6 (c). Where serving these Directions are not urgent they would be either non-key decisions or would follow the Cabinet approval route.

Commented [RF17]: This addition adds the correct legislation for dealing with these matters.

10.15.15 To determine applications for certificates of lawful use and development in relation to proposed used and existing use.

10.15.16 To make observations and respond to consultations on development proposals and consultations on other matters by or on which comments are sought by Government Departments, the Planning Inspectorate, statutory undertakers, and Hertfordshire and Essex County Councils and any other Local Planning Authorities, which, where relevant, are substantially in accordance with the council's policies and are not likely to be controversial..

Commented [RF18]: These minor additions are made to fully cover the range of observations or responses to consultations which the Planning Service currently make.

10.15.xx To carry out all functions relating to National Infrastructure Planning including co-ordination of the Council's response to any consultation, examination or other any other matter concerned with major infrastructure projects.

Commented [RF19]: This addition relates to a current omission from the Constitution.

10.15.17 To advertise in the local press applications required to be advertised by statute or orders or regulations made thereunder, planning applications and applications for listed building consent.

10.15.18 To advertise in the local press and/or by a notice on site applications for planning permission as required by any Development Order made by the Secretary of State.

10.15.19 After consultation with the Head of Legal and Democratic Services, to institute legal proceedings in respect of the contravention of Tree Preservation Orders and unauthorised works to trees in Conservation Area.

10.15.20 To enter into Planning Performance and Extension of Time Agreements.

10.15.xx To provide advice regarding the potential use or development of land or buildings to prospective applications through either the pre-application system, a Planning Performance Agreement or informally.

Commented [RF20]: The provision of pre-application advice, whilst covered by the proposed "catch all" at the start of the section on Planning and Building Control, is recommended to also be explicitly authorised.

- 10.15.21 To determine the submission of nominations for the registration of Assets of Community Value.
- 10.15.22 To authorise an officer to enter land at any time for enforcement purposes in cases where admission has been refused or a refusal is expected or in cases of urgency.
- 10.15.23 To determine submissions as to whether prior approval is required in relation to any of the forms of permitted development for which a prior approval process is required as set out in government regulations (as may be subsequently amended) and in relation to all of the matters which, as specified in the appropriate regulations, those approvals are to be made.
- 10.15.24 To give screening opinions and scoping opinions under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 2017 as amended.
- 10.15.25 To determine fees for planning applications and planning performance agreements.
- 10.15.26 To determine the building regulation fees charged by the council and to take all actions as necessary acting at the council's representative on the Commissioning Panel with regard to the commissioning of the Building Control service.
- 10.15.27 To determine applications submitted for approval under the Building Regulations and made under the Building Act 1984 (as amended) and the Local Government (Miscellaneous Provisions) Act 1976.
- 10.15.28 To be the Appointing Officer for the purposes of the Party Wall Act 1996.
- 10.15.29 To determine any footpath and bridleways matters including their protection, creation, diversion, modification and extinguishment.

10.15.30 To finalise the wording and requirements of planning conditions and reasons for refusal following the approval or refusal to grant planning permission by Development Management Committee in line with the resolutions of the Committee.

Commented [RF21]: Wording added to enable existing situation where resolutions for refusal from DMC (in case of Member overturn where officers will not have provided detail wording of reasons for refusal) need to be reworded in planning language

10.15.31 To make minor amendments and/or corrections of a clerical, grammatical or editorial nature only to the wording of conditions, obligations, reasons and informatives.

10.15.32 To refuse an application. ~~Where~~ where a planning obligation (including a deed modifying or discharging an existing obligation) acceptable to the Head of Planning and Building Control and meeting the requirements of a decision of Development Management Committee (where relevant) has not been entered into, ~~within 3 months of the Committee's resolution~~ the Head of Planning and Building Control can refuse the application.

Commented [RF22]: These proposed changes are minor clarifications and improvements to wordings.

10.15.xa To prepare, consult on, adopt and publish a list of information requirements to be submitted with planning applications, and to use the list to assess the validity of submitted applications.

Commented [RF23]: The Constitution is currently silent on making a Local List of planning application requirements which, whilst covered by the proposed "catch-all", is recommended to be explicitly delegated.

10.15.33 To discharge obligations under s.106 TCPA 1990 (or s.52 of the TCPA 1971) where the Head of Planning and Building Control deems that the obligation(s) has been complied with or is no longer relevant due to subsequent planning decisions or the passage of time.