

Gloucester City Council

Meeting:	Constitution Working Group	Date: 5 October 2016
	General Purposes Committee	18 October 2016
	Council	24 November 2016
Subject:	Changes to Constitution to cater for Local Development Orders and scheme of delegation relating to planning applications	
Report Of:	Corporate Director Partnerships	
Wards Affected:	All Wards	
Key Decision:	No	Budget/Policy Framework: No
Contact Officer:	Jon Sutcliffe, Development Control Manager	
	Email: Jon.Sutcliffe@gloucester.gov.uk	Tel: 01452 396783
Appendices:	None	

FOR GENERAL RELEASE

1.0 Purpose of Report

1.1 Work is underway to propose alterations to the Council's Constitution relating to planning matters. The purpose of this report is to bring these suggested changes to the attention of the Committee prior to them proceeding through the process, and to give the opportunity for the Committee to consider them. The suggested changes relate to two principal areas: firstly to provide the ability for the Council to make Local Development Orders (LDOs); this report outlines the procedures by which any future LDO might be designated (paragraphs 3.11-3.14). Secondly, to make some minor alterations to the proposals that have to be determined by Committee rather than being delegated to officers for determination. The suggested changes are to improve clarity in wording; to update in relation to changes in legislation; and also to enable some additional smaller developments to be dealt with under delegated powers to improve the efficiency of the service.

2.0 Recommendations

2.1 Planning Committee is asked to **RECOMMEND** that

- (1) The suggested changes to the Constitution set out in Para 3.17 & 3.21 of this report be approved by Council.

2.2 Constitution Working Group is asked to **RECOMMEND** that

- (1) The suggested changes to the Constitution set out in Para 3.17 & 3.21 of this report be approved by Council.

- 2.3 General Purposes Committee is asked to **RECOMMEND** that
- (1) The suggested changes to the Constitution set out in Para 3.17 & 3.21 of this report be approved by Council.
- 2.4 Council is asked to **RESOLVE** that
- (1) The suggested changes to the Constitution set out in Para 3.17 & 3.21 of this report be approved .

3.0 Background and Key Issues

- 3.1 This section of the report will be split into two sections, the first relating to LDOs and the second relating to the types of proposals handled by Committee.

Local Development Orders

Background

- 3.2 Section 61A of the Town and Country Planning Act 1990 (as amended) allows a Local Planning Authority to make a Local Development Order ("LDO") that grants planning permission for:
- a) Any development specified in the order; and/or
 - b) Development of any class so specified.
- 3.3 LDOs are already in use in a number of local authority areas, frequently where planning authorities have created orders that grant permission for a range of often routine development proposals. The inclusion of such proposals within an LDO brings the advantage that applicants have certainty in relation to proposals for such uses. From the Council's viewpoint, the 'creation' of a planning permission for specific proposals removes the need for such proposals to be considered individually by officers which can provide additional capacity to deal with other more complex planning decisions and improve overall performance. From a negative viewpoint, an LDO would remove a degree of fee income from the Council, however, the costs of dealing with such applications often exceed the fee received.
- 3.4 Part 3C of the Council's Constitution sets out the powers available to the Planning Committee. Section 1 gives the Committee authority to 'To determine planning applications, the terms of planning agreements and such other matters as are considered appropriate from time to time, excluding matters relating to policy.' (emphasis added).
- 3.5 Moreover, section 4 entrusts the Committee with the power 'To determine matters relating to planning as a District Planning Authority excluding strategic planning matters....'.
- 3.6 Arguably under sections 1 and 4 described above, the Planning Committee has the ability to grant an LDO. However, it is considered that there would be benefit in making this power more explicit and precise. It is therefore recommended that the Council's Constitution is amended to make it explicit that the Planning Committee may consider and grant an LDO.

What are LDOs?

- 3.7 The power to make a LDO has been available to Local Planning Authorities for many years, however, up until more recently it is not a tool that has had widespread use. The current Government is placing great emphasis on the use of LDOs to help accelerate the delivery of new development and act as an instrument for proactive change.
- 3.8 LDOs may be brought forward by either the public sector, private sector or both in partnership. They are seen by Government as a positive planning tool. They create a more certain planning environment and therefore make investment more attractive. They embody a fundamental shift on the part of local authorities from waiting for the market to come to them with a proposal, to initiating development activity by granting planning permission for the kind of development that they want to see come forward on a site.
- 3.9 One of the chief advantages of an LDO is that the order can be shaped to local circumstances and to embody local aspirations – they can be as simple as to grant planning permission for a certain type of housing on a site in a flexible layout that protects the amenity of neighbouring properties or for development parameters to be set for a mixed use, multi stage town centre site.
- 3.10 There are three broad types of LDO:
- Regeneration-led LDO – a regeneration-led LDO is suitable for sites with marginal viability which require front-loading and de-risking in order to attract developers, and convince landowners to get engaged. Often these sites are critical for place shaping objectives to meet housing and community priorities. Regeneration-lead LDOs provide certainty where previous approaches such as Area Action Plans, Supplementary Planning Documents, masterplans or development briefs may have failed. Pilot LDOs sponsored by DCLG have included Brunswick Street, Teignmouth (Teignbridge District Council) and Cleethorpes town centre site (North East Lincolnshire unitary authority).
 - Enabling LDO – an enabling LDO is distinguished from the regeneration-led LDO in that whilst the council wants to encourage development, the project is not so driven by local policy priorities that they are prepared to make a large commitment of scarce resources to up-front costs. The site is more likely to be privately owned and there is value in the land for redevelopment. The landowner will be expected to meet or make a contribution towards the cost in the preparing the LDO in exchange for council's commitment to de-risking the planning process. Examples include the former Birds Eye factory site in Grimsby and the Wellfield Road site in Hatfield.
 - Routine LDO – a routine LDO is an innovative way to simplify the planning system and focus on relatively minor and uncontentious development where the impact of development is foreseeable and standard solutions can be identified and imposed through fairly standard planning conditions or reference to design codes. For example, this might be to widen the scope of permitted development rights.

Process for making an LDO

- 3.11 The requirements for making an LDO are relatively short, which is consistent with their aim of simplifying the planning process. The first task is to prepare a draft LDO. This

needs to specify the nature of the development that will be granted planning permission by the order, including uses and/or building works. The LDO must specify the land that it will relate to. This can be a single site, several properties or parcels of land, or an area-wide LDO. LDOs are specifically not permitted to grant planning permission that relates to a Listed Building and there are restrictions in relation to European sites.

- 3.12 The LDO must include a statement of reasons. This must clearly set out the proposals including a description of the land that will be affected by the LDO. It must also describe the types of development that will be permitted by the LDO. The draft LDO must be subject to a statutory consultation over a minimum 28 day period. Since the community will be asked to comment on the draft LDO, the statement of reasons must be clear and easy to read.
- 3.13 Following consultation, the local planning authority may make any necessary modifications to the LDO. The LDO may then be adopted by the local planning authority. Once adopted, the LDO and statement of reasons must be placed on the planning register. The local planning authority must also notify the Secretary of State.
- 3.14 LDOs are also subject to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

Blackfriars and Quayside LDO

- 3.15 Members will be aware from a recent presentation on LDOs that the City Council and County Council are jointly working together on bringing forward a LDO for the regeneration of the Blackfriars and Quayside sites in the city centre. The LDO is expected to be residential led and, if adopted, would grant planning permission for the redevelopment of these key sites. The intention of the LDO is to de-risk the sites and make them more attractive to potential developers. Informal public consultation is planned to take place in September of this year ahead of a statutory period of consultation towards the end of the year. The current plan is for the LDO to be considered by the City Council, as Local Planning Authority, in January 2017. To assist this process, the Planning Committee should be given explicit ability to handle and approve LDOs.

Other possible LDOs

- 3.16 Officers are currently considering the wider application of the LDO process within the City. Potential areas for the future use of LDOs include minor proposals and extensions and for minor developments relating to commercial and industrial premises. All such designations would be assessed using the process outlined above in paras 3.11-3.14.

Proposed Changes

- 3.17 There is currently no specific provision for the determination of LDO's in the Council's Constitution. Approval is therefore sought for Planning Committee to be given delegated authority to "determine all future matters regarding the making of Local Development Orders, including consideration of the results of any consultation process on an Order and the determination of the final adoption of an Order".

Committee Items/Scheme of Delegation

- 3.18 Planning Committee has the responsibility for taking decisions on various types of applications, which are set out in Table 2 of Part 3C of the Constitution. These categories of application cannot therefore be determined by officers under delegated powers. Other types of application not listed in that table can be handled under delegated powers (although are also subject to a Member call-in procedure and officer referral process).
- 3.19 It is suggested that there are a small number of anomalies and uncertainties in the wording contained in that table which would benefit from being amended. In addition, some of the thresholds or scales of development which trigger applications being reported to Committee could perhaps be considered to be a little low and could potentially be slightly increased to reduce the number of such relatively small-scale and uncontroversial applications being reported to Committee. This would enable Committee resources to be focussed on the more significant proposals.
- 3.20 The table below contains on its left side the current wording in the constitution, and on its right side the suggested amended wording. In italics is an explanation of the reason why the change is being suggested. These are the types of application that have to be decided by Planning Committee.

3.21

EXISTING WORDING	PROPOSED WORDING
Applications submitted by or on behalf of the City Council, or for development on Council owned land or where the Council has a direct interest, except where no objections are received.	(No change)
Applications submitted by a serving Member or Officer of the Council.	Applications submitted by a serving Member or Officer of the Council (other than officers below Team Leader level who have no involvement in the planning process); or submitted by a person related to either of the above. <i>Revised wording to enable applications submitted by junior staff whose work area has no involvement in the planning process to be delegated. Wording also widened to include relatives – this is consistent with a question contained on the national planning application forms, and increases transparency.</i>
Applications, which constitute a significant departure from the most up to date Local Plan that is formally approved and adopted by the Council for Development Control purposes.	Applications, which constitute a significant departure from the most up to date Local Plan that is formally approved or adopted by the Council for Development Control purposes. <i>'or' replaces 'and' to ensure clarity.</i>

Applications for 50 or more new houses/flats.	Planning applications for 50 or more new houses/flats. <i>To clarify that 'prior approval' applications are excluded</i>
Applications which entail more than 1000 square metres of gross floor space.	Applications which entail more than 2000 square metres of new non-residential gross floor space. <i>1000 sq m is a low figure and a number of applications for employment uses around 1100 sq. m. have had to be reported to Committee. The addition of new is to clarify that this section does not relate to change-of-use proposals; and 'non-residential' is added for clarity (residential apps are dealt with above)</i>
Buildings or structures which exceed 15 metres in height.	New buildings or structures which exceed 20 metres in height. <i>'new' added to ensure applications for small additions to existing buildings which take the height just over the threshold can be delegated; and height increased to 20m to be consistent with some 'permitted development' rights for telecoms masts</i>
Applications where Officers are recommending an agreement under S.106 of the Town and Country Planning Act 1990 with the exception of Agreements which relate to the collection and administration of contributions for open space which accord with Local Plan policy and associated Supplementary Planning Guidance.	Applications where Officers are recommending an agreement under S.106 of the Town and Country Planning Act 1990 with the exception of Agreements which relate to the collection and administration of contributions for open space which accord with Local Plan policy and associated Supplementary Planning Guidance; Unilateral Undertakings; and Deeds of Variation. <i>Unilateral Undertakings are often associated with minor development which would otherwise be delegated, and do not impose any obligations upon the Council. Deeds of variation are needed where for example applications are made for minor changes to conditions on existing permissions with a current s106.</i>
Applications which are accompanied by an Environmental Statement.	(No change)
Applications for change of use to hot food takeaway, except where no objections are received.	(No change)

<p>Applications for a change of use to Class A2(c) within the Town and Country Planning (Use Classes) Order 1987, where the Officer recommendation is for approval.</p>	<p>Option A Applications for a change of use to a pay-day loan shop or betting office, where the Officer recommendation is for approval. Option B Applications for a change of use to Class A2(c) within the Town and Country Planning (Use Classes) Order 1987, or to a pay-day loan shop or betting office, where the Officer recommendation is for approval.</p> <p><i>It is understood that this section was intended to ensure that applications for 'pay-day loan' shops and betting offices would come to Committee when recommended for approval. Those uses were originally within Use Class A2(c). The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015 specifically provided that from 15 April 2015, those uses were no longer within Class A2(c). As such, the current wording would not now require such applications to come to Committee, and so needs revising.</i></p> <p><i>If Members just require the specific uses of pay-day loan shops and betting offices to come to Committee then Option A above would secure that. If Members require those uses and other uses which remain within Class A2(c) to come to Committee then Option B above would secure that.</i></p>
<p>Applications for the demolition of a listed building.</p>	<p>Applications for the demolition of a listed building (other than minor associated buildings within the curtilage).</p> <p><i>This would enable applications which look to remove small ancillary buildings associated with the principal Listed Building to improve its setting to be dealt with under delegated powers.</i></p>
<p>Applications for the development that significantly affects the setting of a grade 1 or 2* Listed Building or a Scheduled Ancient Monument.</p>	<p>Applications for development that significantly affects the setting of a grade 1 or 2* Listed Building or a Scheduled Monument.</p> <p><i>'the' removed as superfluous. Updated terminology as what were Scheduled</i></p>

	<i>Ancient Monuments are now termed as Scheduled Monuments..</i>
Applications for the removal of trees protected by a Tree Preservation Order (except where exempted by the Act) where there are objections received.	Applications for the removal of trees protected by a Tree Preservation Order (except where exempted by the Act) and not associated with an application for planning permission, where there are objections received. <i>This clarifies that applications for planning permission will be considered by Committee if they fall elsewhere within this table, but otherwise not solely because they involve the removal of a TPO tree.</i>
	NB The provisions in all the categories above do not apply to applications under s73 of the T&CP Act 1990 which seek minor alterations to conditions. <i>Suggested to enable small amendments to conditions to be dealt with under delegated powers</i>

- 3.22 It is recognised that there is a balance to be struck between enabling the minor and non-controversial applications to be dealt with under delegated powers, and also ensuring that Planning Committee is able to deal with the types of application which it is best placed to do. The suggested changes are brought forward with the intention that they will remove a small number of items from Committee agendas, which is likely to assist the Council in reaching decisions in a timely manner and raising its performance levels which are measured by Government. Equally the changes recognise that there are still a range of types of application that are best placed to be determined by Planning Committee, and this would be enhanced by Committee being able to focus more on such significant proposals. It should be noted that no changes are being suggested to the existing arrangements that enable Members to call-in applications to Committee, and also enable officers to refer applications to Committee if they think it is necessary.
- 3.23 This report was considered by Planning Committee on 6 September 2016, which resolved to recommend to the Constitution Working Group that the suggested changes to the Constitution set out in Paragraphs 3.17 and 3.21 of the report, together with a preference for Option A with regard to applications for a change of use to a pay-day loan shop or betting office where the Officer recommendation is for approval, be approved by Council.

4.0 Asset Based Community Development (ABCD) Considerations

- 4.1 Not applicable

5.0 Alternative Options Considered

- 5.1 Not changing the Constitution is an option. However, this would not resolve the issue of whether Planning Committee specifically has the ability to deal with LOO's; and also would mean the current list of applications to be determined by Planning Committee would remain in place without achieving the benefits to be gained through the proposed modifications.

6.0 Reasons for Recommendations

- 6.1 The Council's Constitution does not currently make specific provision for the Council to make and adopt Local Development Orders (LDO's). LDO's are a planning tool that can be beneficial in both bringing challenging sites forward for re-development, and also for enabling some types of minor and small-scale development to be undertaken without needing a planning application. Both of these may be beneficial to the Council and the City. The suggested changes to the Constitution set up a process for LDO's to be considered, and this is considered to be both necessary and beneficial.
- 6.2 The other changes relate to matters which have to be determined by Planning Committee rather than under delegated powers. It is suggested that the proposed changes are minor in nature and would enable a more efficient use of Committee time and planning resources if they are put in place.
- 6.3 Planning Committee is invited to recommend the suggested changes to Constitution Working Group, General Purposes Committee and Council.

7.0 Future Work and Conclusions

- 7.1 In terms of process, these suggested changes will go through a number of steps, before being considered by Council. The suggested timeline is set out below:

6 September	Planning Committee
5 October	Constitution Working Group
18 October	General Purposes Committee
24 November	Full Council

8.0 Financial Implications

- 8.1 If developments are brought forward through the LDO process rather than by means of a planning application, then the usual planning fee income required for such planning applications would not be received. However, the Council has the ability to set charges for approval of details relating to LDO developments. It would be within the Council's remit to set such charges at a level which would match the loss of planning application fee income. If such charges were introduced there would be no net financial impact.

9.0 Legal Implications

- 9.1 The procedures for making a Local Development Order are set out in sections 61A to 61D and Schedule 4A of the Town and Country Planning Act 1990, as amended, and Articles 38 and 41 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

9.2 The proposal will require an amendment to the constitution which needs to be approved by full council upon consideration of a proposal prepared by the Head of Paid Service after consultation with the Constitutional and Electoral Working Group (14.02 (a) of the constitution).

9.3 It is considered advisable to amend the Constitution to bring decisions regarding LDO's clearly within the remit of Planning Committee.

10.0 Risk & Opportunity Management Implications

10.1 It is essential for the Council to be sure that it has made proper procedural arrangements for dealing with powers and responsibilities contained in national legislation. The provision of clear arrangements to deal with LOO's therefore fulfils that requirement, and therefore mitigates against risks that may otherwise arise.

10.2 Similarly, updating the types of applications to be handled by Planning Committee reduces the risks that may arise from uncertainty of whether some applications can be handled under delegated powers or not.

11.0 People Impact Assessment (PIA):

11.1 The PIA Screening Stage principally focussed on the fact that these are procedural changes to clarify who determines planning matters. As the ultimate decisions on such matters are made in terms of national and local planning policy, and also that principally it is the impacts of the development that are fundamental rather than who the applicant is.

11.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

12.0 Other Corporate Implications

Community Safety

12.1 Not applicable.

Sustainability

12.2 The principle of sustainable development is at the heart of the planning system, although these procedural changes should have no significant additional effects on sustainability.

Staffing & Trade Union

12.3 Not applicable.

Background Documents: None