



# COUNCIL

TUESDAY, 15TH DECEMBER, 2020

At 6.30 pm

VIRTUAL MEETING - ONLINE ACCESS,

## **SUPPLEMENTARY AGENDA**

### **PART I**

<b><u>ITEM</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE NO</u></b>
8.	<b><u>CONSTITUTIONAL AMENDMENTS UPDATE - DEVELOPMENT MANAGEMENT PANELS</u></b>  To consider the above report	3 - 14

This page is intentionally left blank

Report Title:	<b>Constitutional Amendments Update – Development Management Panels</b>
Contains Confidential or Exempt Information?	No - Part I
Lead Member:	Councillor Coppinger, Lead Member for Planning, Environmental Services and Maidenhead
Meeting and Date:	Full Council 15 December 2020
Responsible Officer(s):	Adrien Waite, Head of Planning/ Mary Severin, Monitoring Officer
Wards affected:	All

www.rbwm.gov.uk



## REPORT SUMMARY

At the Extraordinary Full Council meeting on 26 May 2020 it was resolved to amend the Constitution to create a single Royal Borough Development Management Panel and allow the effective running of virtual panel meetings as part of the Council's response to the coronavirus crisis.

The changes were made subject to a report being presented to Full Council in December 2020.

This report provides an update and recommends retaining the changes to the Constitution pending a further review.

## 1. DETAILS OF RECOMMENDATION(S)

**RECOMMENDATION:** That full Council notes the report and:

- i) **Agrees to retain the amendments to the constitution as previously approved on 26 May 2020.**
- ii) **Agrees a further update report and review to be presented to Full Council in June 2021.**

## 2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

### Options

**Table 1: Options arising from this report**

Option	Comments
Retain the terms of reference for the Royal Borough DM Panel as currently set out in the constitution.  <b>This is the recommended option</b>	The updated constitution ensures robust and efficient virtual panel meetings can continue and therefore the Council is able to promote economic recovery through the planning process. The changes have maintained best practice and confidence in decision making.

Option	Comments
Modify the constitution and approve modified changes.	Members may wish to propose and consider amendments to the constitution in line with the aims set out in this report. In particular Members should be mindful of the need for virtual panels to run effectively.

## Development Management Panel Amendments

2.1 At the Extraordinary Full Council meeting on 26 May 2020 the constitution was amended to create a single Royal Borough Development Management Panel alongside other changes to the terms of reference and speaking protocol to allow virtual meetings to run efficiently. The resolution at the May Full Council meeting was for an update report to be presented in December 2020. The intention to establish a working group was minuted, unfortunately it has not proved possible to convene the working group to date. The Head of Planning apologises that the working group has not yet been convened and confirms it will be a priority in the coming months.

2.2 Since the changes were approved the Royal Borough Development Management Panel has met on six occasions with a seventh meeting scheduled for 16 December 2020. The Panel has dealt with the following cases:

- 15 Major applications
- 6 Called-in applications
- 1 referred at Head of Planning's discretion

All but 3 of these cases have been determined in line with officer recommendation (14%) which is consistent with the rate of overturns under the previous panel arrangements and terms of reference.

2.3 There has been a reduction in the overall number of cases being determined at Panel which has enabled greater focus and debate on the major cases of strategic significance which have been presented to Members. The main difference lies in the minor applications no longer being referred to Panel. The Planning Department has continued to deal with such applications under its robust delegated process and issue decisions in a timely way without the potential delays caused by the Panel cycle. Such applications could still be called-in should Members consider it necessary but this has not happened in the vast majority of cases. There has also been a decrease in overall call-ins being heard at Panel which can be seen as evidence that there is confidence in the delegated process. Moreover, all but one of the called-in cases that have been determined went with officer recommendation.

2.4 Feedback has been received from two parish councils on the changes made. Part of this feedback reflects the decision on a particularly contentious case. Members do not sit on the Panel as representatives of their ward but are there to fulfil the role of the Council as Local Planning Authority. Therefore it is not the

case that any decision should be taken only by Councillors from a specific part of the Borough. Relevant planning considerations, including those which may relate to local context, are thoroughly explained and examined in officers' reports and presentations to enable any Member of the Panel to make an informed decision based on planning grounds.

- 2.5 As noted in 2.3, those applications which would previously have been referred to Panel could still be called-in by a ward councillor in line with the current terms of reference. There is no evidence within the Planning department that the requirement to include a planning reason has prevented cases from being heard at Panel where necessary. Officers have advised Members where call-ins have not been for a suitable reason and a further call-in with a planning-based reason can still be provided within the relevant time frame. Equally the requirement for the call-in to be submitted by a ward member has not resulted in any cases not being determined by Panel.
- 2.6 It is important for timely decision making that the call-in process does not add delays to the determination of applications and prevent a case being decided at the earliest opportunity, especially given that the vast majority of cases are not called-in. The deadline of the Neighbour Consultation Expiry date remains to ensure that call-ins are submitted before the earliest date when an application could legally be determined. This date is 28 days from the issuing of letters to neighbouring properties and so is considered to give adequate time for the application to be reviewed and any call-in submitted.
- 2.7 The creation of a single panel with amended terms of reference and speaking rights has enabled the virtual meetings to run smoothly. Whilst with all these types of meeting there have been some instances of technical difficulties, Members have been able to fully engage in debate and the presentations from officers have worked well in this format. The speakers have been able to address the Panel on cases or the copy of their speech read on their behalf. Generally, the level of public engagement in the meetings has been greater with all but one meeting having over 200 views on the Council's YouTube channel. The October 2020 meeting had over 1,000 views. These numbers are far greater than the number of people in the public gallery for the average in-person meeting prior to COVID-19.
- 2.8 The changes have also allowed for significant efficiencies in staff time. Planning Officers often deal with cases throughout the Borough and so would have to work to multiple deadlines when there is more than one panel. The preparation of a Panel agenda also involves significant time from managers to check reports, planning support staff to produce the documents and Democratic Services officers to publish in the agenda. Each panel then requires the preparation of presentations as well as answering queries and attending briefings for all officers involved. A single panel allows officers to better plan their workload to ensure that cases are dealt with in a timely manner and focus on those with the highest priority. It also therefore supports the operation of more robust delegated process by enabling officers and managers to focus on the assessment and determination of applications rather than time-consuming preparations for Panel meetings.
- 2.9 The changes discussed in this report, which have been in place for the last six months, represent positive changes in the functioning of the Panel and the determination of planning applications. The changes have ensured that the

Panel has been able to robustly consider the planning merits of an application against the development plan, in the necessary quasi-judicial manner, facilitate major applications and allowed contentious items of public interest to be determined in public. The changes have assisted in the operation of a virtual panel which has been, and remains, necessary due to the pandemic but will also allow for the efficient and robust decision making if and when there is a return to in-person meeting formats. The Head of Planning recommends that the current arrangements continue.

- 2.10 However, it is acknowledged that it has not yet been possible to convene the intended working group and virtual meetings remain necessary. As such, it is suggested further review is brought to Full Council in June 2021.

### 3. KEY IMPLICATIONS

- 3.1 Any proposed changes require Full Council approval as they are changes to the Council constitution.

**Table 2: Key Implications**

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Current terms of reference in the Constitution maintained	Previous Development Management Panel arrangements put back in place	Current constitution retained	n/a	n/a	n/a
Royal Borough Development Management Panel operating as currently	Previous Development Management Panel arrangements put back in place	Royal Borough Development Management Panel operating as currently	n/a	n/a	Next meeting scheduled for 16 December 2020.

### 4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 There were previously three Development Management Panel Chairmen who each received a special responsibility allowance of £6,107 per annum. Retaining the changes would result in there only being a single Panel Chairman. This would represent a further saving of £6,107 for the next six months.
- 4.2 Time-savings arising from moving to a single panel are generated from items including report, agenda and minute production, officer time from planning services, legal and democratic services and technical consultees who attend Panels from time to time. However, these are not anticipated to result in further cost savings over the period and would simply make the process manageable under the current circumstances.

## 5. LEGAL IMPLICATIONS

- 5.1 To facilitate proper decision making under powers given to the Planning Authority under s70 Town and Country Planning Act 1990.

## 6. RISK MANAGEMENT

- 6.1 The potential risks are set out below:

**Table 4: Impact of risk and mitigation**

<b>Risks</b>	<b>Uncontrolled risk</b>	<b>Controls</b>	<b>Controlled risk</b>
Difficulties in managing Panel meetings in the virtual environment	High	Current terms of reference which include reduced panel size, amendments to speaking rights, items taken to Panel	Low
Slowed economic recovery due to planning delays	Medium	Current terms of reference which include reduced panel size, amendments to speaking rights, items taken to Panel	Low

## 7. POTENTIAL IMPACTS

- 7.1 Equalities. None identified.
- 7.2 Climate change/sustainability. The changes will maintain the reduced number of meetings and number of required attendees. They will also enable the continued operation of a virtual panel. The current format also reduces the need to travel which is beneficial in terms of sustainability, although the benefit is difficult to quantify
- 7.3 Data Protection/GDPR. None identified.

## 8. CONSULTATION

- 8.1 The Lead Member for Planning has been consulted on the proposals.

## 9. TIMETABLE FOR IMPLEMENTATION

- 9.1 The full implementation stages are set out in table 5.

**Table 5: Implementation timetable**

<b>Date</b>	<b>Details</b>
15 December 2020	Full Council consider update report
16 December 2020	Next meeting of Royal Borough Development Management Panel held
June 2021	Review considered by full Council

## 10. APPENDICES

10.1 This report is supported by 2 appendices:

- Appendix A – Current constitution part 6
- Appendix B – Current constitution part 7f

## 11. BACKGROUND DOCUMENTS

11.1 This report is supported by four background documents:

- The [current council constitution](#) (v. 20.2)
- The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020
- Planning Advisory Service - Virtual Planning Committees - A guide to revising protocols and procedures
- Planning Advisory Service - Virtual planning committee – a hints & tips guide

### CONSULTATION (MANDATORY)

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent</b>	<b>Date returned</b>
Cllr Johnson	Leader of the Council	03/12/20	07/12/20
Cllr Rayner	Lead Member for Resident and Leisure Services, HR, IT, Legal, Performance Management and Windsor	07/12/20	07/12/20
Cllr Coppinger	Lead Member for Planning and Maidenhead	03/12/20	04/12/20
Duncan Sharkey	Managing Director	03/12/20	07/12/20
Russell O’Keefe	Director of Place	03/12/20	07/12/20
Adele Taylor	Director of Resources/S151 Officer	07/12/20	07/12/20
Mary Severin	Monitoring Officer	07/12/20	07/12/20
Nikki Craig	Head of HR, Corporate Projects and IT	07/12/20	07/12/20
Karen Shepherd	Head of Governance	07/12/20	07/12/20

## REPORT HISTORY



<b>Decision type:</b> Council decision	<b>Urgency item?</b> No	<b>To Follow item?</b> Yes
Report Author: Adrien Waite, Head of Planning,		

## Appendix A – Terms of Reference for Development Management Panel

### B1 Royal Borough Development Management Panel

#### B1.1 Purpose

(I) Within the operating guidelines and budget approved by the Council the Royal Borough Development Management Panel will determine applications relating to the following:

a. New full or outline planning applications, **regardless of recommendation**, falling into the definition of major development as defined by the Town and Country Planning (Development Management Procedure) (England) Order 2015 (or as superseded).

*Note: Section 73/73A applications or reserved matters applications are delegated matters unless called in under the call-in provisions in b) below.*

*Note: Any Crown applications which are covered by the National Security arrangements set out in the National Planning Policy Guidance are exempt from part a) and are delegated to the Head of Planning.*

b. Applications where a Borough councillor has requested that an application be called-in to be the subject of a decision by the Development Management Panel (an application is this case being an application for Full, Outline, Hybrid or Householder Planning Permission or an application for Listed Building Consent. No other case types are the subject of the call-in provision.) This is conditional in that the call-in must:

- i) Be in writing using the Councillor call-in pro forma and received before the Neighbour Consultation Expiry Date for that application, and
- ii) Relate to an application in their own ward; and
- iii) provide a planning reason based on a material consideration for the call-in.

c. Where an application is made by a Councillor or a member of their family and there are one or more representations.

d. Where an application is made by an officer employed in a role which is directly involved in the decision making stage of the planning application process and there are one or more representations.

e. Any matter where authority is normally delegated to the Head of Planning, but where the Head of Planning chooses not to exercise their delegated authority and considers the matter should be referred to the Royal Borough Development Management Panel

(II) All other functions regarding town and country planning and development management listed in Part A and related to trees and hedgerows listed in Part I of Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and the CIL regulations are to be delegated to the Head of Planning. All functions listed in the Localism Act 2011 related to plan making and neighbourhood planning are delegated to the Head of Planning save for those which the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 require to be determined by Full Council. For the avoidance of doubt the Head of Planning also has delegated authority for those types of application subsequently introduced under the Town and Country Planning Acts (including secondary legislation and regulations) subject to the exceptions listed above.

(III) To advise the Council, the Cabinet, the Infrastructure Overview and Scrutiny Panel on the preparation, updating and monitoring of the Local Plan and policies relating to development management guidance.

### **B1.2 Membership of the Royal Borough Development Management Panel**

The Panel shall have 9 members. One shall be the Chairman.

Membership shall be in line with political balance.

A Cabinet Member may be a Member of the Development Management Panel but the Lead Member(s) holding the main portfolio for Planning shall not be permitted to be a Member.

### **B1.3 Quorum**

3 Members

### **B1.4 Frequency**

Meetings of the Panel will take place once per calendar month, usually on the 3<sup>rd</sup> Wednesday of each month

Note: While the dates are ideally fixed they may be subject to change for reasons such as venue availability issues or may be on other days if additional extraordinary meetings of the Panel are required. Extraordinary meetings may be called by agreement of the Head of Planning with the Chairman of the Panel.

## Appendix B – Current Protocol for Public Speaking at Development Management Panels

### 1. Public Speaking at Development Management Panel Meetings

#### 1. Public Speaking at Development Management Panel Meetings

- 1.1 Planning applications are determined by either a Development Management Panel or officers acting under delegated authority.
- 1.2 Each application is subject to a public consultation exercise which enables the public and other bodies to comment in writing on the application before it is determined.
- 1.3 The Council provides the opportunity for the public and for applicants (or their agents) to speak at the planning meeting before the Development Management Panel makes their decision.
- 1.4 If objectors speak at the meeting, the applicant must be allowed to speak provided they have notified Democratic Services of their intention (or provided the Chairman has used his discretion to allow speaking in the absence of notification to Democratic Services). An applicant may speak at a meeting even where there are no objectors wishing to speak (but if the applicant is in agreement with the Officers' recommendations to the Panel the Chairman will request the applicant to restrict any comments to matters not covered, or not covered fully, in the Officer's Report).
- 1.5 Anyone who has written to the Council with representations on a planning application will be contacted by the planning department at least one week before the relevant meeting is due to take place when the application will be considered. They will be invited to tell the Council if they wish to speak at the meeting.

#### Notification to Democratic Services

- 1.6 If anyone does wish to speak they must register and provide a written copy of their proposed representations to Democratic Services by 5pm, 2 working days before the Development Management Panel (i.e. Monday, 5pm, if the Panel is on Wednesday).
- 1.7 The Panel Chairman will not normally allow applicants, the public, any other members of the public (or their respective agents) to speak if they have failed to notify the Council as stated above, of their wish to speak.

#### Speeches to the Development Management Panel

- 1.8 Generally, applications where the public are to speak will be moved to the start of the agenda, at the discretion of the Chairman.
- 1.9 No new documents should be circulated to the Panel at the meeting except the Panel Update prepared by officers. The Panel Update will contain information pertinent to the application provided to the case officer after the Panel report publication date and up to 5pm of the working day before the date of the Panel meeting. It shall be at the discretion of the planning officer if any further updates are to be accepted after this point. Messages should not be passed to individual Panel Members.
- 1.10 Only one public speaker will be allowed to speak against an application. They will be given, a total of **three (3) minutes** in which they can present their views. They must

register their intention to speak and provide a written copy their proposed representations to Democratic Services by 5pm, two working days before the Development Management Panel. If there are multiple people wishing to express opposition to an application, they must nominate a single spokesperson. If a single spokesperson is not nominated only the first person to register will be allowed to speak.

- 1.11 If a Parish or Town Council, has made representations, and a member of that organisation wishes to address the meeting, they must register their intention to speak and provide a written copy their proposed representations to Democratic Services by 5pm, two working days before the Development Management Panel. The Panel Chairman will not normally allow a member of the organisation to speak if they have failed to notify the Council as stated above, of their wish to speak.
- 1.13 A Parish or Town Council representative will be allotted a total of **two (2) minutes in which they can present their views..** If more than one Parish or Town Council wishes to address the meeting they should nominate a single spokesperson for all organisations no additional time will be allocated unless exceptional circumstances apply (see below).
- 1.14 The applicant, their agent or any member of the public wishing to support an application will be allocated, in total **three (3) minutes** in which to present their views. They must register their intention to speak and provide a written copy of their proposed representations to Democratic Services, by 5pm, at least two working days before the Panel meeting. Only a single spokesperson will be allowed to speak in support of an application, as such should a member of the public wish to speak they are encouraged to contact the applicant or their agent. If a single spokesperson is not nominated only the application or their agent will be allowed to speak.
- 1.15 Any Member of the Council, not already a Member of the DMP, wishing to speak at a Panel will be permitted to speak in favour or against any agenda item after all public speakers have spoken and prior to the Panel debating the item. Non Panel Members will be restricted to **three (3) minutes** in total. Non Panel Members must notify Democratic Services by 5pm, 2 working days prior to the Development Management Meeting of their request to speak, and provide a written copy of their proposed representations.
- 1.16 The Chairman of the meeting has discretion to extend the speaking time for any party, in exceptional cases. This discretion is intended to be applied only rarely. Exceptional circumstances might arise as a result of the range of issues raised by the matter. Where the Chairman has extended speaking time for any one party, then the time shall be extended by a similar amount for any other party.
- 1.17 Where any circumstances prevent a party from attending the meeting or being able to present for their full allotted time the Panel shall continue to consider and determine the application having regard to the written copy of their representation submitted to Democratic Services in advance of the meeting.

This page is intentionally left blank