

Report Title:	<b>Borough-wide Development Management Panel</b>
Contains Confidential or Exempt Information?	NO -
Member reporting:	Councillor Targowska, Lead Member for HR, Legal and IT
Meeting and Date:	Full Council 24 April 2018
Responsible Officer(s):	Alison Alexander, Managing Director
Wards affected:	All

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## REPORT SUMMARY

- 1 Major applications represent the most significant developments across the Borough and merit consideration in public by a development management panel. Consistency of decision making against adopted and emerging planning policy is key; decisions should be in accordance with legal requirements. A single Panel which considers all major applications will assist in ensuring consistency against the objectives set out in Council policy contained in the Development Plan meeting the objectives of a plan led system. It will ensure also that Corporate Priorities identified in the Council Plan are met where that is reasonable through the planning process.

## 1 DETAILS OF RECOMMENDATION(S)

**RECOMMENDATION:** That full Council notes the report and approves the following amendments to the Council's Constitution:

- i) Applications falling within the definition of major development will be determined by the Borough-wide development management Panel;
- ii) Applications which propose a net increase of three or more dwellings and those which are called in and fall within the minor or other categories will continue to be reported to the relevant area Development Management Panel;
- iii) The membership of the Borough-wide Development Management Panel will increase to 15, political balance and quorum to be adjusted accordingly; and
- iv) Planning Enforcement items will continue to be reported to the relevant Area Development Management Panel unless the Chair authorises the issue of the notice prior to Panel.

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

- 2.1 The Council's Constitution sets out which planning applications may be determined under delegated authority by the Head of Planning and those which must be determined by the relevant Development Management Panel.

**Table 1: Options**

<b>Option</b>	<b>Comments</b>
The Borough-wide Panel of 15 members considers all major planning applications and only those minor applications for between 3-9 units plus called in applications falling in the minor and other category are considered by the area panels. Other applications will continue to be determined under delegated authority. <b>This is the recommended option.</b>	A single panel of 15 elected members determining all major applications across the borough will improve consistency in decision making against adopted and emerging planning policy.
Retain the current system where major planning applications which do not accord with the development plan are determined under delegated powers. <b>This is not the recommended option.</b>	Professional planning officers are able to determine whether the proposals before them accord with the Council's development plan policies and to make a decision accordingly. The decision is not then made in public.

### **3 KEY IMPLICATIONS**

- 3.1 Government has set statutory targets for planning decisions across all three categories: major, minor and other. The statutory determination period for a major application is 13 weeks (EIA development 16 weeks) and the Council is expected to achieve 60% of decisions within that timescale. For significant schemes the Council enters into Planning Performance Agreements which then set a bespoke timetable outside of the Government's statutory period; this is covered in legislation and is permissible.
- 3.2 The Council's performance on major applications in the year 2017/18 was 87.04% on target. The current scheme of delegation does not allow the Head of Planning to approve major applications, 42 decisions to approve in 2017/18 were made by the Panel. Although the Head of Planning can currently refuse permission under delegated authority for major development which is contrary to adopted Council policy only 7 out of the 12 refusals were handled under delegated powers. This change would mean that the Head of Planning does not have delegated authority to determine any major applications, even those made under Section 73 to vary a previous permission granted.
- 3.3 Should the determination of major applications on target fall below 60% over a rolling two year period Government can intervene in decision making and applicants can make applications direct to the Planning Inspectorate.

3.4 Additionally of those major applications approved there is a quality assessment made by Government related to how many are then allowed at appeal.

3.5 A 'major' application is defined in law:

*Major development*” means development involving any one or more of the following—

- (a) The winning and working of minerals or the use of land for mineral-working deposits;
- (b) Waste development;
- (c) The provision of dwellinghouses where—
  - (i) The number of dwellinghouses to be provided is 10 or more; or
  - (ii) The development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) The provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) Development carried out on a site having an area of 1 hectare or more;

*Note: “dwellinghouse”* does not include a building containing one or more flats, or a flat contained within such a building;

3.6 Based on the year 2017/18 when 54 major applications were determined this would equate to roughly 4 per month for a panel to consider. As applications do not come in to the Council in a controlled fashion the reality is that some months the number would be higher and others lower. The Panel would be supported by a Clerk, a legal officer, a highways officer and at least one planning officer together with any other necessary professional expertise. An additional 12-13 meetings would be added to the corporate calendar of meetings for 2018/19 and beyond. Currently three Area Development Management Panels meet and would need to continue to do so to handle around 80 minor and other applications per financial year.

**Table 2: Key implications**

<b>Outcome</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date of delivery</b>
All major planning applications determined by Boroughwide Panel	1 July 2018	11 June 2018	Before 11 June 2018	By 1 June 2018	11 July 2018
80% of Major planning applications determined in time		31 March 2019			31 March 2019

## **4 FINANCIAL DETAILS / VALUE FOR MONEY**

- 4.1 There is no direct financial implication arising from additional meetings unless external room hire is required. There would be a resource impact in terms of officers taking Time Off in Lieu for attendance at evening meetings.
- 4.2 In commissioning the highways development control service to Project Centre the contract covered only a limited number of panel meetings being attended by the highways officer. This limit was exhausted in 2017-18 and the LPA was paying for highway officer attendance. In the event that major planning applications are determined at one single panel the highways officer is likely to have reduced attendance only at the Borough Wide Development Management meetings which would fall in line with what is covered in the contract.
- 4.3 Members are entitled to claim mileage for travelling to meetings.

## **5 LEGAL IMPLICATIONS**

- 5.1 Planning is council function as set out in Schedule 1 of The Local Authorities (Functions and Responsibilities)(England)(Amendment) Regulations 2000
- 5.2 Section 101 of the Local Government Act 1972 enables full Council to decide the arrangements and delegations how council functions will be discharged. Under s 101(1) the Council can change current arrangements and delegate council functions to an alternative committee to the authority provided that the rules of political balance are maintained under section 15 Local Government and Housing Act 1989.
- 5.3 The Terms of Reference for the Borough-wide Panel will be altered to reflect the law as set out in para 3.4 of this Report. The changes will be as closely as possible to the legal definition but the exact wording will change to ensure editorial consistency with other terms in the Constitution and changes to the Area Panels. The changes to the Constitution are shown in Appendix 1 to this Report.

## **6 RISK MANAGEMENT**

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

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
The Council falls beneath the 60% target for major decision on time over a 2 year period	high	Management of officer caseload and meetings of the panel every 4 weeks	low

## 7 POTENTIAL IMPACTS

- 7.1 As noted in section 4.1 of this report there would be an impact on officer time in terms of the capacity to fulfil the requirements arising from an additional meeting in the calendar.

## 8 CONSULTATION

- 8.1 None.

## 9 TIMETABLE FOR IMPLEMENTATION

**Table 5: Implementation timetable**

<b>Date</b>	<b>Details</b>
22 May 2018	Calendar of meetings for BW DM Panel in 2018/19 provided at annual Council.
25 May 2018	Amendments made to the Constitution and published on the Council website.

## 10 APPENDICES

- 10.1 Appendix 1 sets out the amendments to be made to the Constitution as a result of the recommendation.

## 11 BACKGROUND DOCUMENTS

[https://www3.rbwm.gov.uk/info/200110/about\\_the\\_council/910/council\\_constitution](https://www3.rbwm.gov.uk/info/200110/about_the_council/910/council_constitution)

[https://www3.rbwm.gov.uk/downloads/file/3320/2017-2021\\_-\\_council\\_plan](https://www3.rbwm.gov.uk/downloads/file/3320/2017-2021_-_council_plan)

## 12 CONSULTATION (MANDATORY)

<b>Name of consultee</b>	<b>Post held</b>	<b>Date issued for comment</b>	<b>Date returned with comments</b>
Cllr Dudley	Leader of the Council	18.04.18	18.04.18
Cllr Coppinger	Lead Member for Planning	18.04.18	18.04.18
Alison Alexander	Managing Director	17.04.18	17.04.18
Russell O'Keefe	Executive Director	17.04.18	18.04.18
Andy Jeffs	Executive Director	17.04.18	
Rob Stubbs	Section 151 Officer	17.04.18	18.04.18
Nikki Craig	Head of HR and Corporate Projects	17.04.18	17.04.18
Karen Shepherd	Service Lead – Information Governance and Democratic Services	17.04.18	17.04.18

<b>Name of consultee</b>	<b>Post held</b>	<b>Date issued for comment</b>	<b>Date returned with comments</b>
Shared Legal Services	n/a	17.04.18	18.04.18

## REPORT HISTORY

<b>Decision type:</b> n/a	<b>Urgency item?</b> Yes To allow the amendments to be made with immediate effect.	<b>To Follow item?</b> Yes –urgent item
Report Author: Jenifer Jackson, Head of Planning, 01628 796042		

## Appendix 1 – Changes to Constitution

*Note: underlined text is new. ~~Strikethrough~~ text is deleted from existing version.*

### Part 6 – Terms of Reference of all other Committees, Panels and other Bodies of the Council

#### D3 Development Management Panels

##### D3.1 Purpose

##### Borough-wide Development Management Panels

The Borough-wide Development Management Panels will consider applications for Major Development.

“Major Development” means development involving any one or more of the following—

- (a) the excavation, processing or working of minerals or the use of land for such uses;
- (b) any development designed to be used wholly or mainly for the purpose of, or material change of use to, treating, storing, processing or disposing of refuse or waste materials;
- (c) the provision of dwellings where—
  - (i) the number of dwellings to be provided is 10 or more; or
  - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more;

Note: “dwellings” includes a building constructed as a single occupation dwelling or a single flat within a contained within a building;

##### Area Development Management Panels

(i) Within the operating guidelines and budget approved by the Council the Area Development Management Panels will consider all matters other than those delegated to a Parish Development Management Subcommittee the Borough-wide Development Management Panel relating to the following:

a. Where a Councillor has requested within 28 days of the publication of the weekly list featuring an application, using the adopted pro-forma for Calling in applications, that an application should be the subject of a decision by the Area Planning Panel

(other than applications for Certificates of Lawfulness for Proposed Uses and Development)

b. Where a planning application proposes between three and nine ~~more than two~~ dwellings (inclusive) ~~or over 1000 sm of non-residential floor-space~~ and the officer recommendation is to approve the decision is made by the Area Planning Panel unless the decision is delegated to the Head of Planning by the Chairman of the relevant Panel.

c. Where the Officer's decision would reverse a previous decision of a Development Management Panel for the same development or would have the effect of preventing the proper implementation of any previous decision of the Council.

d. Where an emerging or approved Local Plan or other Policy or Guidance is in existence for a particular area or development type and the Officers recommendation on the application would be contrary to the Development Plan

e. Where an application seeks a renewal of a planning permission, or a variation of a planning permission or a variation of a planning condition for a planning permission previously approved by the panel which would reverse the decision taken by that Area Panel.

f. Where an application is made by a Councillor or a member of their family and there are one or more objections or it is contrary to adopted planning policies.

g. Where an application is made by the Council or the Council has land ownership interest in the application site.

h. Where an application is made by officers in politically restricted posts or by an officer employed in a role which is part of or interacts with the Planning application process and there are one or more objections or it is contrary to adopted planning policies

i. Where in the opinion of the Head of Planning ~~and in consultations with the Lead Member for of Planning~~, that it would not be appropriate to use delegated authority.

j. Where any tree of amenity value or significance that is to be felled whether covered by a TPO or in a Conservation Area or on Highways land may come to an Area Panel if the Head of Planning in consultation with ~~and~~ the Lead Member for Planning agree it is appropriate in the public interest. i.e. a contribution to the amenity or street scene.

k. for the issue of all notices for planning enforcement, trees and listed buildings except in urgent circumstance where they would be issued by the Head of Planning and reported to the area development panel at the earliest available opportunity.

l. All other functions regarding town and country planning and development control listed in Section 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 are to be delegated to the Head of Planning ~~unless delegated to a Parish Development~~.



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

### *D3.2 Membership*

The Membership of all Development Management Panels and substitutes will be selected at Annual Council.

#### Borough-wide Panel

15 members

#### Area Development Management Panels

There shall be three Area Development Management Panels who shall consider applications in the following wards:

- a) Maidenhead Development Management Panel – 9 Members  
Wards: Belmont, Bisham & Cookham, Boyn Hill, Bray, Cox Green, Furze Platt, Hurley & the Walthams, Oldfield, Pinkneys Green and Maidenhead Riverside.
- b) Windsor Rural Development Management Panel – 9 Members  
Wards: Ascot & Cheapside, Horton & Wraybury, Old Windsor, Sunningdale and Sunninghill & South Ascot.
- c) Windsor Urban Development Management Panel – 9 Members  
Wards: Castle Without, Clewer North, Clewer South, Clewer East, Eton and Castle, Eton Wick, Datchet, Park
- ~~d) Joint Panel: Where an application appears likely to have significant impact which goes beyond the area of the relevant Development Management Panel a joint meeting of the Panels will be convened to determine the application.~~
- ~~e) Borough-wide Panel: Where an application appears likely to have significant impact which extends across the whole borough, a Borough-wide panel will be called by the Leader of the Council, consisting of 13 Members. Group Leaders, in consultation with the Lead Member for Planning/Opposition Spokesperson for Planning as appropriate, would appoint the Members of the Panel from their respective groups on a meeting-by-meeting basis.~~

### *D3.3 Dual Hatted Members and Lobbying*

These issues are dealt with in the Planning Code of Conduct Part 7 B. Any queries can be discussed with the Democratic Services Manager or Monitoring Officer.

N.B: A Cabinet Member may be a Member of a Development Management Panel.

*D3.5 Quorum:* Maidenhead DM Panel – 3 Members

Windsor Rural DM Panel – 3 Members  
Windsor Urban DM Panel – 3 Members  
Borough-wide DM Panel – 5 Members

*D3.6 Frequency:* Every four weeks

*D3.7 Joint Development Management Panels*

~~Planning applications which are likely to have a significant impact, going beyond the area of the relevant Area Development Management Panel will be considered and determined at a joint meeting of the Development Management Panels.~~

~~The initial decision as to whether an application falls into this category will be taken by the Head of Planning in agreement with the Lead Member for Planning and the Development Management Panel Chairmen. In the event of a lack of unanimity, the Development Management Panel Chairmen and the Lead Member for Planning will meet and reach a majority decision to recommend to the Head of Planning.~~

~~Where at least 5 Members of an Area Development Management Panel, or the Chairman of that Panel, believes that an application due to be determined by the other Development Management Panel is likely to have a significant impact on their area and should be determined by Joint Panel, they shall notify the Head of Planning in writing as soon as possible and, in any event, prior to the time fixed for the Development Management Panel due to determine the application. The matter will then be considered by the Head of Planning in consultation with the Development Management Panel Chairmen and the Lead Member for Planning, who will decide how the application is to be determined. If this decision cannot be made prior to the Development Management Panel at which the application was due to be considered, the application will be deferred. In the event of a majority decision not being made, the Lead Member for Planning shall determine how the application shall be determined.~~

## Part 2B – Responsibility for Council Functions

1.4 Function	Decision making body
Functions relating to <b>town and country planning and development control</b> as listed in Section A. of Schedule 1 to the Regulations and as may be amended by law from time to time.	<p>The <b><u>Borough-wide Development Management Panel</u></b> will consider <u>applications for Major Development (as defined in the panel's terms of reference in Part 6)</u></p> <p>The Council has <u>also</u> established <u>three</u> Area Development Management Panels –<b>Maidenhead Development Management Panel, Windsor Urban Development Management Panel and Windsor Rural Development Management Panel</b> <u>to consider other</u></p>

1.4 Function	Decision making body
	<p><u>planning applications and matters as defined in Part 6.</u> These powers are delegated to these panels. Where an application appears likely to the Head of Planning to have a significant impact which goes beyond the area of the relevant Development Management Panel, a meeting of <b>Borough Wide Development Management Panel</b> will be convened to determine the application.</p> <p>The Panels have made delegations to Officers, which are included within its terms of reference and the scheme of delegation.</p>