

Report Title:	<b>Development Management Panel Review</b>
Contains Confidential or Exempt Information	No – Part I
Cabinet Member:	Councillor Coppinger, Cabinet Member for Planning, Environmental Services and Maidenhead
Meeting and Date:	Extraordinary Full Council 29 June 2021
Responsible Officer(s):	Adrien Waite, Head of Planning
Wards affected:	All

www.rbwm.gov.uk



## **REPORT SUMMARY**

This report sets out recommendations as to how the Council's Development Management Panel should be structured and related changes to the Council's Constitution. Following discussions with the Working Group, it is recommended that North area and South area committees are formed.

Alternative options have been explored, and it is recommended that associated risks are monitored and a review report is brought forward in 2022 so that the impact of the committees can be reviewed.

### **1. DETAILS OF RECOMMENDATION(S)**

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

- i) Delegates authority to the Monitoring Officer to amend the Constitution from 1<sup>st</sup> August 2021 as set out:
 
  - a. in Appendix A to establish a North Area and a South Area Committee to take effect**
  - b. in Appendices B and C to amend details of speaker's rights and require Members of the Committees to undertake annual training****
- ii) Requests the Head of Planning to bring a report reviewing these new arrangements to Full Council by June 2022**
- iii) Requires Group Leaders to inform the Monitoring Officer by 19 July 2021 of those Members and substitutes from their respective Groups to be appointed as the Members and substitutes of the North Area and South Area Committees**

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

#### **Options**

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

<b>Option</b>	<b>Comments</b>
Establish a single Royal Borough Development Management Committee to meet on a monthly basis	Single committee makes the most efficient use of council resources whilst reducing risk of inconsistent decision making.

Option	Comments
	A single committee reduces public perception of local accountability of decision makers.
<p>Establish two Development Management Committees covering northern and southern wards of 9 Members each to meet on a monthly basis</p> <p><b>This is the Recommended Option subject to monitoring and review.</b></p>	<p>Two committees increases risk of inconsistent decision making and creates an additional burden on resources in Planning and Democratic services.</p> <p>Two committees create greater local accountability for Members and residents.</p>

### Background

- 2.1 In May 2020, Full Council agreed to establish a single Development Management Panel in light of lockdown restrictions and the need to ensure smooth running of virtual meetings. This was extended in December 2020 given the on-going restrictions.
- 2.2 The temporary legislation allowing for virtual meetings expired in May this year. Following that, it was agreed that the review of the Development Management Panel arrangements would be brought to an extraordinary Full Council on 29<sup>th</sup> June 2021.

### Working Group

- 2.3 Following the Full Council meeting in December 2020, a Working Group was established to discuss the future arrangements for Planning Committees within the Borough. The group consisted of Borough and Parish Councillors. The group agreed the following as its purpose:

*To review future arrangements for Development Management Panels and associated procedures based on the following principles:*

- *Ensure defensible and sound planning decisions which support placemaking agenda*
- *Ensure public visibility and transparency of the decision-making process on applications of local significance and strategic importance giving public confidence in the decisions*
- *Ensure public engagement in and understanding of the process*
- *Ensure robust and simple procedures which can be adaptable to changing circumstances and are accessible*

- 2.4 These reflect the main themes and concerns that were expressed by the Working Group and that it was felt any future arrangements should seek to address.
- 2.5 Whilst this report is the recommendation of the Head of Planning, the views of the Working Group have been fully considered in reaching that recommendation.

- 2.6 The majority of the Working Group do not consider that a single committee covering the whole Borough should be established on a permanent basis. The principal concern of the group is that this would not allow for local residents to hold the decision makers accountable through subsequent democratic processes. In addition, it is considered important that there is sufficient knowledge of local context and issues for the different areas of the Borough represented by the membership of the Committee. The view is that a single committee would take decisions further away from local people affected by them.
- 2.7 As part of the Group's discussions, different alternatives were discussed but these were not considered to address the principal concerns of the Group. The majority of the Group therefore is of the view that two separate committees covering northern and southern wards should be established.
- 2.8 The risks raised by two committees were also discussed. These were not considered by the Group to outweigh their principal concern with decisions being made by a single committee.

### **Comparison with Other Authorities**

- 2.9 As part of the working groups discussions we looked at the panel or committee structures in the other five Berkshire authorities. All but West Berkshire operate a single planning committee. It is worth noting that West Berkshire is significantly larger in area than all the other Berkshire authorities – more than three times the size of the Royal Borough.
- 2.10 The nature of applications referred to committee in the other Berkshire authorities reflects those in the Royal Borough's constitution. Predominantly the committees deal with major applications and those which have been called in by Councillors.
- 2.11 The number of members in committees of neighbouring authorities range from 9 to 18.

### **Alternatives Considered**

- 2.12 From the discussions with the Working Group two main alternatives emerged; a single committee or two committees reflecting the different areas of the Borough..

#### Single Committee

- 2.13 The current single Royal Borough Development Management Panel has been operating since June last year. It has met 13 times with the two most recent meetings being held in person. In that time it has considered 40 applications. The vast majority of these were applications for Major development.

- 2.14 The main benefit of a single committee is that it allows for greater consistency in decision making as the same group of members are involved in all decisions to be taken by the Committee. This reduces the risk of different interpretations of policy or any misunderstandings of policy resulting in inconsistent decisions being taken for similar applications in different parts of the Borough. Inconsistency in decision making undermines the robustness and defensibility of decision which can lead to increased losses at appeal and even costs awarded against the Council.
- 2.15 In addition a single committee ensures consistency in running the meetings as there is a single Chairman responsible for issues arising. Furthermore, administering a single committee is a more efficient use of officer resource and time. This will enable Planning officers to undertake more of the “value” add tasks, such as pre-application engagement, that ultimately result in better placemaking for the Borough and its residents. Running two committees on a monthly basis places additional burdens on resource in Planning Support services and in Democratic Services who will need to publish agendas, manage speaker registration and clerk both meetings.
- 2.16 The most significant criticism of a single committee is that it does not allow the decision makers to be held accountable by those affected by their decisions through the democratic process. The perception is that decisions are taken by members who do not necessarily have significant local knowledge or understanding of local context. It must be emphasised that members make decisions on planning applications as the Local Planning Authority and not as ward members. Their decision must be based on planning policies and other material planning considerations. Where local context is a relevant planning consideration, this will be set out in the application documents and officers report. Members can also visit sites to familiarise themselves with the local area prior to making a decision.
- 2.17 A larger single committee was discussed with the Working Group who felt that this would not address the core issue of local accountability and the public perception of it. Officers would note that in a two committee system not every ward is represented at Committee and so there is always the risk of local people not being able to hold decision makers accountable.
- 2.18 It is acknowledged that the original change agreed by Full Council was predominantly on the basis of lockdown restrictions and the need for virtual meetings. This has fallen away and in-person meetings are now being held. A benefit of the virtual meetings has been increased public engagement with greater numbers watching meetings via web broadcasts.

### Two Committees

- 2.19 The main alternative to the option discussed above was to establish two committees similar to the Maidenhead and Windsor Panels which were replaced last May.
- 2.20 This is the preferred option of the Working Group. It is also noted that an e-petition is currently gathering signatures seeking this which has 187 signatures at time of writing. It is anticipated that the e-petition will be formally submitted

to the Council prior to the Extraordinary Full Council meeting on 29 June 2021. It is considered by the Working Group that two committees create greater accountability by virtue of decisions being taken at a more local level to those that would be most affected by them. As noted above, it is nonetheless important that members take decisions only based on relevant material planning considerations. Decisions which take into account other factors could be open to challenge.

- 2.21 Two committees increase the risk of inconsistent decisions being made between the committees where policies are applied differently by different decision makers. In addition is the risk that processes, such as when to give speakers additional time or allow additional speakers, could be handled differently by different chairmen. This risk would need to be mitigated by requiring mandatory annual training for all members prior to them being able to sit at a meeting. For the purposes of membership for the new committees meeting from August 2021 onwards, the current training requirement as set out in the constitution (Part 2 C29.4) would apply with the mandatory annual training requirement from October 2021.
- 2.22 There would also need to be reflective learning shared between the committees so that lessons could be learnt from decisions taken and related planning appeal decisions as well. Mandatory training including a review of decisions taken would be recommended for a single committee as well to ensure best practice. Monitoring would take the form of providing quarterly report to each committee on the decisions made by the other and reasons for them to enable shared reflective learning and mitigate risk of inconsistencies. A quarterly report would also be presented on any appeal decisions where decision has been taken by committee to allow lessons to be learnt from Inspector's decisions.
- 2.23 Preparing agendas and supporting the running of two committees places an additional burden on resources in Planning and Democratic services. The additional burden will reduce the time that Planning officers can put towards other work, in particular pre-application engagement. It is noted that the current terms of reference agreed in May 2020 by Full Council has reduced the number of cases that are referred to committee which would result in shorter agendas.

### **Recommendation and Conclusion**

- 2.24 The initial basis for the change agreed by Full Council in May 2020 was predominantly the impact of lockdown restrictions and the need to ensure smooth operation of virtual committees. Whilst some restrictions remain, decision-making meetings have now returned to being held in-person and the necessity for the original change has been removed. However, the government have issued a call for evidence on the possibility of further legislation to allow remote meetings in future.
- 2.25 The running of the single panel for the last year has brought a number of benefits:
- Reduced risk in decision making ensuring defensible and sound decisions

- More efficient use of Council resources
- Increased transparency with greater public engagement through internet broadcast of meetings

2.26 With these in mind and having also considered the views of the Working Group, as the original basis for moving to a single committee is no longer required it is recommended that two committees are established alongside monitoring over the next year with an update and review to be brought to Full Council by June 2022. It is suggested that these changes take effect from 1<sup>st</sup> August 2021 to allow necessary lead in time for meeting set up and preparation of reports.

2.27 The following is therefore recommended:

- Amend the Constitution to remove the Royal Borough Development Management Panel and establish two area planning committees:

South Area covering Sunningdale & Cheapside; Ascot & Sunninghill; Old Windsor; Datchet, Horton & Wraysbury; Eton & Castle; Clewer East; Clewer & Dedworth West; Clewer & Dedworth East;

North Area covering Hurley & Walthams; Cox Green; Oldfield; Boyn Hill; St Mary's; Belmont; Riverside; Furze Platt; Pinkneys Green; Bisham & Cookham; Bray

- Both committees to have 9 members respectively in line with political balance
- All members required to attend annual training in order to sit on an area committee
- Head of Planning to undertake monitoring of decisions and relevant appeal decisions to provide update reports to both Committees.

### **Other recommended changes**

2.28 It is also recommended that the following changes are made irrespective of the number of committees.

2.29 Changes are recommended to require that written copies of proposed speeches to the Committee should be submitted by 5pm on the day of the meeting and not at the time of registering to speak.

2.30 It is proposed to require those wishing to speak to register by 12pm two working days before the meeting. This is to ensure there is time to liaise with multiple parties in the event there is more than one person wishing to speak.

2.31 It is proposed to increase the time allowed for Parish or Town Council representatives to address the Committee to 3 minutes, in line with the time allowed for other speakers.

### 3. KEY IMPLICATIONS

**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>
North and South area committees established subject to monitoring and review	North and South area committees established without monitoring and further review	Recommended changes made	N/A	N/A	1 August 2021

### 4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 Establishing two committees would require two Chairmen each receiving a special responsibility allowance of £6230 which would be an increase on the allowances paid out since May 2020.
- 4.2 Report, agenda and minute production for two committees would mean increased officer time from Planning Services, Legal and Democratic Services and technical consultees who attend committees from time to time. Terms of reference agreed in May 2020 has mitigated this by reducing the number of cases on agendas.

### 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

**Table 3: Impact of risk and mitigation**

<b>Risk</b>	<b>Level of uncontrolled risk</b>	<b>Controls</b>	<b>Level of controlled risk</b>
Inconsistent and unsound decision making	High	Recommended monitoring report to be produced and shared with both committees	Medium

		Mandatory training for members to sit on committee	
--	--	--	--

## 7. POTENTIAL IMPACTS

- 7.1 Equalities. None identified. Equality Impact Assessments are published on the [council's website](#).
- 7.2 Climate change/sustainability. If meetings continue in their current format, where some officers, non-committee Members and members of the public can attend virtually, the impact of the introduction of a second committee would be mitigated by the overall reduction in journeys for these individuals.
- 7.3 Data Protection/GDPR. None identified.

## 8. CONSULTATION

- 8.1 Options have been raised and discussed with members of the Working Group.

## 9. TIMETABLE FOR IMPLEMENTATION

- 9.1 The full implementation stages are set out in table 4.

**Table 4: Implementation timetable**

Date	Details
19 <sup>th</sup> July 2021	Group Leaders to nominate Committee Members and Substitutes
1 <sup>st</sup> August 2021	Amendments to constitution to take effect
4 <sup>th</sup> and 18 <sup>th</sup> August 2021	First meetings of North and South area committees

## 10. APPENDICES

- 10.1 This report is supported by two appendices:

- Appendix A – Proposed amendments to Part 6 of the Constitution
- Appendix B – Proposed amendments to Part 7 of the Constitution
- Appendix C – Proposed amendments to Part 2 of the Constitution

## 11. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Date returned
Cllr Coppinger	Lead Member for Planning, Environmental Services and Maidenhead	17/06/21	17/06/21
Duncan Sharkey	Chief Executive	17/06/21	17/06/21



Adele Taylor	Executive Director of Resources/S151 Officer	17/06/21	
Andrew Durrant	Executive Director of Place	16/06/21	16/06/21
Kevin McDaniel	Executive Director of Children's Services	17/06/21	
Hilary Hall	Executive Director of Adults, Health and Housing	17/06/21	17/06/21
Andrew Vallance	Head of Finance	17/06/21	
Elaine Browne	Head of Law	17/06/21	
Emma Duncan	Deputy Director of Law and Strategy / Monitoring Officer	17/06/21	
Nikki Craig	Head of HR, Corporate Projects and IT	17/06/21	17/06/21
Louisa Dean	Communications	17/06/21	
Karen Shepherd	Head of Governance	17/06/21	18/06/21

## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>	<b>To follow item?</b>
Council decision	No	No

Report Author: Sian Saadeh Development Management Service Manager
---

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

### B1 ~~Royal Borough Development Management Panel~~Area Committees

#### B1.1 Purpose

(I) Within the operating guidelines and budget approved by the Council the ~~Royal Borough Development Management Panel~~Development Management Area Committees 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 relevant Area Development Management ~~Panel~~Committee (an application in 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-relevant Area Borough Development Management Panel Committee.

(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 Development Management Area Committees**

~~The Panel shall~~Each Committee shall have 9 members. One shall be the Chairman.

Membership shall be in line with political balance.

Members for the North Area Committee will be drawn from ~~M~~members representing the following wards:

Hurley & Walthams; Cox Green; Oldfield; Boyn Hill; St Mary's; Belmont; Riverside; Furze Platt; Pinkneys Green; Bisham & Cookham; Bray

Members for the South Area Committee will be drawn from ~~m~~Members representing the following wards:

Sunningdale & Cheapside; Ascot & Sunninghill; Old Windsor; Datchet, Horton & Wraysbury; Eton & Castle; Clewer East; Clewer & Dedworth West; Clewer & Dedworth East

A Cabinet Member may be a Member of ~~the~~ an Area Development Management Panel Committee but the Cabinet 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~~each committee will take place once per calendar month, usually on the 1<sup>st</sup> and 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 Committee](#) are required. Extraordinary meetings may be called by agreement of the Head of Planning with the Chairman of the [Panel Committee](#).

## Appendix B –Public Speaking at Development Management Panel Area Committees

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

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

- 1.1 Planning applications are determined by either an Area Development Management Panel Committee 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 Committee 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 Committee 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 with~~ Democratic Services by ~~5pm~~ 12pm, 2 working days before the Development Management Panel Area Committee (i.e. Monday, ~~5pm~~ 12pm, if the Panel is on Wednesday). Registered speakers should provide a copy of their proposed representations prior to the start of the meeting to allow their representation to be read in the event of any technical failure or unavoidable delay in attending the meeting.
- 1.7 The Panel Committee 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 Committee

- 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 Committee at the meeting except the Panel Committee Update prepared by officers. The Panel Committee Update will contain information pertinent to the application provided to the case officer after the

Panel Committee report publication date and up to 5pm of the working day before the date of the Panel Committee 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 Committee 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 with Democratic Services by 12pm, 2 working days before the Development Management Area Committee (i.e. Monday, 12pm, if the Committee is on Wednesday). ~~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 with Democratic Services by 12pm, 2 working days before the Development Management Area Committee (i.e. Monday, 12pm, if the Committee is on Wednesday). ~~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~~ **three (3) 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 with Democratic Services by 12pm, 2 working days before the Development Management Area Committee (i.e. Monday, 12pm, if the Committee is on Wednesday). ~~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 Committee, wishing to speak at a Panel meeting 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 Committee Members will be restricted to **three (3) minutes each** in total. Non Panel Members must register their intention to speak with Democratic Services by 12pm, 2 working days before the Development Management Area Committee (i.e. Monday, 12pm, if the Committee is on Wednesday). ~~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 [if one has been submitted to Democratic Services in advance of the meeting as detailed in paragraph 1.6 above.](#)

## Appendix C – Extract from Part 2C

### **C29 MEMBERSHIP OF COMMITTEES, FORUMS AND PANELS**

C29.4 No Member may be permitted to serve as a member or a substitute member of any regulatory Panel/Committee without first having attended a training session, which must have been held since the Member was last elected. For the purpose of this rule, regulatory panels/committees are any Development Management ~~Panel~~Committee, Licensing Panel or Appeals Panel. For Area Development Management Committees, the mandatory training must take place on an annual basis.