

DEMOCRACY AND GENERAL PURPOSES COMMITTEE MEETING

Date: Tuesday 23 November 2021
Time: 6.30 pm
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Mrs Blackmore (Vice-Chairman), Cooke, Cooper, English, Hastie, Perry, Purle (Chairman), M Rose and R Webb

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

Page No.

- | | |
|-----------------------------------------------------------------------------------------------------------------------|---------|
| 1. Apologies for Absence | |
| 2. Notification of Substitute Members | |
| 3. Urgent Items | |
| 4. Notification of Visiting Members | |
| 5. Disclosures by Members and Officers | |
| 6. Disclosures of Lobbying | |
| 7. To consider whether any items should be taken in private because of the possible disclosure of exempt information. | |
| 8. Minutes of the Meeting Held on 8 September 2021 | 1 - 4 |
| 9. Presentation of Petitions (if any) | |
| 10. Question and Answer Session for Members of the Public | |
| 11. Questions from Members to the Chairman (if any) | |
| 12. Committee Work Programme | 5 |
| 13. Reports of Outside Bodies | |
| 14. Church Road, Otham Review | 6 - 34 |
| 15. Governance Working Group - Update | 35 - 41 |

Issued on Monday 15 November 2021

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

16. Local Government Boundary Review - Council Size Submission
(Report to follow after Member event)

17. Whole Council Elections - Further Options

42 - 47

INFORMATION FOR THE PUBLIC

In order to ask a question at this meeting in person or by remote means, please call **01622 602899** or email committee@maidstone.gov.uk by 5 p.m. one clear working day before the meeting (i.e. by 5 p.m. on Friday 19 November 2021). You will need to provide the full text in writing.

If your question is accepted, you will be provided with instructions as to how you can access the meeting.

In order to make a statement in relation to an item on the agenda, please call **01622 602899** or email committee@maidstone.gov.uk by 5 p.m. one clear working day before the meeting (i.e. by 5 p.m. on Friday 19 November 2021). You will need to tell us which agenda item you wish to speak on.

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MAIDSTONE BOROUGH COUNCIL

DEMOCRACY AND GENERAL PURPOSES COMMITTEE

MINUTES OF THE MEETING HELD ON WEDNESDAY 8 SEPTEMBER 2021

Present: Councillors Bartlett, Mrs Blackmore, Cooke, English, Hastie, McKay, Perry, Purle (Chairman) and R Webb

40. **APOLOGIES FOR ABSENCE**

Apologies were received from Councillors Cooper and M Rose.

41. **NOTIFICATION OF SUBSTITUTE MEMBERS**

Councillor Bartlett was present as a Substitute for Councillor Cooper, and Councillor McKay was present as a Substitute for Councillor Rose.

42. **URGENT ITEMS**

There were no urgent items.

43. **NOTIFICATION OF VISITING MEMBERS**

There were no Visiting Members.

44. **DISCLOSURES BY MEMBERS AND OFFICERS**

There were no disclosures by Members or Officers.

45. **DISCLOSURES OF LOBBYING**

Councillor English had been lobbied on Item 14 – Request for an Additional Outside Body.

46. **EXEMPT ITEM**

RESOLVED: That all items be taken in public as proposed.

47. **MINUTES OF THE MEETING HELD ON 27 JULY 2021**

RESOLVED: That the Minutes of the meeting held on 27 July 2021 be approved as a correct record and signed.

48. **PRESENTATION OF PETITIONS**

There were no petitions.

49. QUESTION AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

There were no questions from members of the public.

50. QUESTIONS FROM MEMBERS TO THE CHAIRMAN

There were no questions from Members to the Chairman.

51. COMMITTEE WORK PROGRAMME

RESOLVED: That the Committee Work Programme be noted.

52. REPORTS OF OUTSIDE BODIES

There were no reports of Outside Bodies.

53. REQUEST FOR AN ADDITIONAL OUTSIDE BODY

The Democratic Services Officer introduced the report which outlined the request from the Strategic Planning and Infrastructure Committee for the Kent Downs Line Partnership to be added as an additional outside body, with appointments to fall within that Committee's remit. The Committee were informed that, upon the review of the Constitution, it was advised that full Council should be recommended to make the decision.

RESOLVED: That Council be recommended to approve that the Kent Downs Line Partnership be added as an additional outside body within the remit of the Strategic Planning and Infrastructure Committee.

54. NEW EXECUTIVE MODEL

The Head of Policy, Communications and Governance introduced the report and outlined the executive model proposed by the Committee's working group and the response to the survey sent to Members. The model included four Policy Advisory Committees (PACs) to carry out pre-decision scrutiny, and one Overview and Scrutiny Committee in accordance with the legislative requirements. The survey of Members showed that 68% of respondents agreed in principle with the model outlined in the report.

In response to questions, it was confirmed that regulatory Committees had not been considered or changed when the new executive model had been developed. It was acknowledged that there would be resource implications within the Democratic Services Team. A fixed-term contract had been approved for a Democratic Services Officer to support the development of the model and the local government boundary review project. The Constitution would be created using a previous version the 2014 when the Council had an executive model in place, and the Legal Team with external expert advice would lead this work.

Concern was raised that the PACs would have limited powers to influence decisions made, and that Councillors without a Cabinet position would have limited influence in decision-making.

It was argued that the proposed model was designed to be inclusive and encourage engagement from Members who did not hold Cabinet positions.

RESOLVED: That

1. The Executive Model outlined at 3.3 of the report be recommended to Council for adoption at the next Annual Meeting of the Council in 2022;
2. Council be asked to approve the next steps as per the timetable set out in paragraph 2.4 and section 7 of the report;
3. Council be asked to approve the use of reserves to fund the work required to review and redraft the constitution; and
4. The working group continue to operate and review the redrafted significant parts of the constitution prior to the Committee's consideration for recommendation to the Council for adoption.

Note: Councillor Cooke joined the meeting during this item.

55. **WHOLE COUNCIL ELECTIONS - DECISION STAGE**

The Democratic and Electoral Services Manager introduced the report which outlined the outcomes of the public consultation on whole council elections. 3,130 responses were received and of the respondents who expressed a preference, 71.6% were in favour of whole council elections, and the result was within the margin of error that would be expected for a survey of that scale.

In response to questions, the Democratic and Electoral Manager explained that the questionnaires were sent to 15,000 households chosen at random following sampling methodology as previously used by the Council, and analysis had shown the result to be statistically significant.

Concerns were expressed that whole council elections risked a large turnover of Councillors, which could lead to poor decision-making, with financial implications for the council. Additionally, groups had historically been unable to put forward enough candidates when whole council elections had occurred, which led to seats not being contested in some wards.

It was also expressed that a similar survey undertaken previously had yielded similar results, with a majority of respondents in favour of whole council elections. The financial saving that would be made was highlighted, and also the pre-election period would be reduced to once every four years. Continuing with elections by thirds would lead to the loss

of single- and two-Member wards as the Local Government Boundary Review would be affected by the election cycle.

RESOLVED: That

1. Council be recommended to pass the following resolution at an Extraordinary meeting:

“That the Maidstone Borough Council hereby adopts a scheme of whole council elections, meaning an electoral cycle of one election every four years with all councillors being elected, with the first such election being 2024”

2. In the event that Council does not accept the recommendation, a report be brought back to the Committee on further options such as a referendum.

Councillors English, Hastie, McKay and R Webb requested that their dissent be noted.

56. DURATION OF MEETING

6.30pm to 7.43pm.

2021/22 WORK PROGRAMME

	Committee	Month	Origin	CLT to clear	Lead	Report Author
Governance Review Working Group Update	D&GP	26-Jan-22	Officer Update		Angela Woodhouse	Angela Woodhouse
LGBR Boundary Work	D&GP	26-Jan-22	Officer Update		Angela Woodhouse	Ryan O'Connell
Pay Policy Update	D&GP	26-Jan-22	Officer Update		Bal Sandher	Bal Sandher
Governance Review Working Group Update	D&GP	16-Feb-22	Officer Update		Angela Woodhouse	Angela Woodhouse
Revised Constitution	D&GP	09-Mar-22	Officer Update		Angela Woodhouse	Angela Woodhouse
Local Government Reform	D&GP	TBC	CLlr Request	Yes	Alison Broom	Angela Woodhouse

Agenda Item 14

DEMOCRACY AND GENERAL PURPOSES COMMITTEE

23 November 2021

Church Road, Otham Review

Final Decision-Maker	Democracy and General Purposes Committee
Lead Head of Service	Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Angela Woodhouse, Head of Policy, Communications and Governance
Classification	Public
Wards affected	All

Executive Summary

The report at Appendix A sets out the findings of the review into the Church Road, Otham case following a request from Policy and Resources Committee for an independent review to identify the lessons to be learnt. This Committee is asked to review the findings of the report and approve its submission to Policy and Resources.

Purpose of Report

Review and recommend to Policy and Resources.

This report makes the following recommendations to this Committee:

Note the findings and recommend the following actions to Policy and Resources for implementation:

- a) That external planning training on the officer role and role of statutory objectors is provided to Councillors appointed to Planning Committee and the Planning Referral body as part of the annual Councillor development programme.
- b) The Member development programme include training on the Local Plan and its significance.
- c) Councillors be encouraged to attend meetings of the SPI Committee on the Local Plan as well as all briefings on the plan and the planning policy team include all groups in briefings.
- d) More information be provided to the public on the planning process and how objections are considered starting with additional information on the Council's website.
- e) An annual training event be held as part of the Councillor training programme run by an external agency such as PAS on the planning process, objections and how they are weighted and considered to aid councillors in ward work.

Timetable	
<i>Meeting</i>	<i>Date</i>
Policy and Resources Committee	3 February 2021
Democracy and General Purposes Committee	10 March 2021
Democracy and General Purposes Committee	23 November 2021
Policy and Resources Committee	15 December 2021

Church Road, Otham Review

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>The report recommendation supports the achievement of the objectives by seeking to review and improve Council decision making.</p>	Angela Woodhouse, Head of Policy, Communications and Governance
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendation supports the achievement of the cross cutting objectives by seeking to review and improve Council decision making.</p>	Angela Woodhouse, Head of Policy, Communications and Governance
Risk Management	Set out in the risk section at paragraph 5.1 of the report.	Angela Woodhouse, Head of Policy, Communications and Governance
Financial	The proposals set out in the recommendation need no new funding for implementation, the additional training proposed can be met within the existing member training funding.	Section 151 Officer & Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Angela Woodhouse,

		Head of Policy, Communications and Governance
Legal	The Council have power to do anything which is calculated to facilitate or is conducive or incidental to the discharge of any of their functions under s111 of the Local Government Act 1972. A review seeking to improve Council decision making would be within this remit.	Interim Deputy Head of Legal Partnership.
Privacy and Data Protection	No impact	Corporate Insight, Communities and Governance Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment.	Equalities and Communities Officer
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Public Health Officer
Crime and Disorder	No impact.	Angela Woodhouse, Head of Policy, Communications and Governance
Procurement	No impact.	Angela Woodhouse, Head of Policy, Communications and Governance
Biodiversity and Climate Change	No impact.	Angela Woodhouse, Head of Policy, Communications and Governance

2. INTRODUCTION AND BACKGROUND

- 2.1 The Policy and Resources Committee on the 3rd of February met to consider challenging the outcome of an appeal against refusal of planning consent and an associated non-determination appeal concerning a site in Church Road Otham where the Planning Inspector decided that the proposed development should be approved.

2.2 As a result it was agreed that:

"Lessons be learned from the experience of the Church Road application; and that the terms of reference and lines of enquiry be suggested and presented to the Democracy and General Purposes Committee for consideration."

- 2.3 This Committee agreed the key lines of enquiry and scope of the review at its meeting on 10 March 2021 following a request from the Policy and Resources Committee. An external advisor was appointed to assist the Head of Policy, Communications and Governance with the review. Democracy General Purposes are asked to consider the findings and recommendations for referral to Policy and Resources as the Committee which requested the review.
- 2.4 As part of the review a survey was carried out of all current members who had been involved in the process, the results of which are attached at Appendix B for information. A number of officers were interviewed including officers from Planning and Mid Kent Legal Services. Telephone interviews were also conducted with four councillors including the former Chairs of Policy and Resources and Planning Committees.

3. AVAILABLE OPTIONS

- 3.1 The report at Appendix A was commissioned as an independent report and is presented for consideration and agreement of the recommendations. The Committee has several options available:
- a) Consider and agree the report and refer to Policy and Resources Committee.
 - b) Consider and amend the report and refer to Policy and Resources Committee.
 - c) Request additional information.

4. PREFERRED OPTION

- 4.1 The Committee is recommended to take forward option a) having considered the findings of the review as set out in Appendix A. The findings address the key lines of enquiry originally agreed by this committee and the committee is asked to note the report and recommend the actions to Policy and Resources for implementation.
- 4.2 The overriding conclusion I have drawn is that there is clear scope for a more comprehensive programme of training for all Councillors on matters relating to planning and planning applications. This extends to include

matters of individual roles and responsibilities, as well as the statutory and regulatory frameworks within which the system operates.

- 4.3 Councillor and public engagement at all stages of the planning process could potentially be strengthened, and more information made available on the Council website, particularly in matters which are high-profile or locally contentious.
- 4.4 Officers, and the role they play in advising Committee, are regulated by their codes of conduct. They have a very limited ability to 'assist' Councillors in formulating reasons which go against their professional judgment or opinion.
- 4.5 The recommendations proposed should assist in providing a greater understanding of the planning system and in how applications should be considered.
- 4.6 The report makes the following recommendations:
 - a) That external planning training on the officer role and role of statutory objectors is provided to Councillors appointed to Planning Committee and the Planning Referral body as part of the annual Councillor development programme.
 - b) The Member development programme include training on the Local Plan and its significance.
 - c) Councillors be encouraged to attend meetings of the SPI Committee on the Local Plan as well as all briefings on the plan and the planning policy team include all groups in briefings.
 - d) More information be provided to the public on the planning process and how objections are considered starting with additional information on the Council's website.
 - e) An annual training event be held as part of the Councillor training programme run by an external agency such as PAS on the planning process, objections and how they are weighted and considered to aid councillors in ward work.

5. RISK

- 5.1 The purpose of the review was to identify lessons learnt and improvements which should mitigate risk in respect of future planning decisions.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Democracy and General Purposes Committee were consulted on the scope of the review following other Councillors' input in March of this year. The review includes feedback from various stakeholders as agreed with the committee.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If approved by the Committee this report will be referred to Policy and Resources to approve and enact the recommendations.

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Review into Church Road Otham
- Appendix B: Councillor Survey Results

9. BACKGROUND PAPERS

Planning Committee 24 October 2019:

- 19/501600/OUT Land West Of Church Road, Otham, Kent, ME15 8SB

Planning Committee on 28 May 2020:

- 19/501600/OUT - Land West Of Church Road, Otham, Kent, ME15 8SB
- 19/506182/FULL - Land West Of Church Road, Otham, Kent, ME15 8SB

Planning Committee 25 June 2020:

- 19/501600/OUT & 19/506182/FULL - Land West Of Church Road, Otham, Kent

Planning Referral Body 13 July 2020:

- Planning Applications 19/501600/OUT & 19/506182/FULL - Land West of Church Road, Otham, Kent, ME15 8SB

Policy and Resources Committee 3 February 2021:

- Review of Planning Inspectorate Decisions – Church Road, Otham

Church Road, Otham Review

1. Introduction

- 1.1. This review was commissioned by the Policy and Resources Committee on the 3rd of February 2021:

"Lessons be learned from the experience of the Church Road application; and that the terms of reference and lines of enquiry be suggested and presented to the Democracy and General Purposes Committee for consideration."

- 1.2 The scope for the review was developed to explore the concerns of Councillors with a view to any lessons and recommendations for change being applied to improve processes in the future. Care has been taken not to stray outside of the concerns relating to this case into a broad review of the planning process.
- 1.3 The key lines of enquiry and approach to this review were agreed by Democracy and General Purposes Committee as set out below:

Lines of enquiry:

- Whether Officer advice to Members was appropriate (throughout the process).
 - Whether the Local Plan site criteria were adhered to at all stages of the planning process regarding this site.
 - The understanding and consideration of the objectors concerns.
 - Should consideration have been given to applying 'Grampian conditions' in this case.
 - The significance of Statutory Consultee objections (mainly Highways) and the evidence needed to counteract this.
 - Whether ward member involvement was sufficient and any improvements that need to be made.
 - The transparency of the process.
 - And from the above the lessons learned and what measures are needed to stop a similar situation arising.
- 1.4 As part of the review several Councillors who were involved in making the decisions have been interviewed, a survey was sent to those Councillors still on the Council who were on the Planning Committee, the Planning Referrals Body and the Ward Councillor and interviews were carried out

with Legal and Planning Officers with questions based on the lines of enquiry.

- 1.5 I was also assisted during the course of the review by an independent planning expert Mr Raymond Crawford a Planning Consultant working with the Planning Advisory Service and former Head of Development Management.

2 Timeline

- The outline application was originally reported to Planning Committee on 24 October 2019 where officers recommended approval as set out in the report.
- Planning Committee deferred consideration of the application for the following reasons:

1. That consideration of this application be deferred for further discussions to:

- *Seek to remove the proposed car park for the Church from the scheme;*
- *Seek to (a) amend the Parameter Plan to provide a greater amount of wooded open space at the southern end of the site to protect the Ancient Woodland and create a sustainable open space and (b) to amend conditions 4 and 7 to require woodland planting to restore and protect the Ancient Woodland and enhance the landscaping around the Church;*
- *Seek to resolve the outstanding issues relating to improvements to the Willington Street/Deringwood Drive junction;*
- *Give further consideration to the impact of the development on the Spot Lane junction and possible mitigation;*
- *Investigate the potential widening of Church Road to the south of the site where this would not involve the loss of Ancient Woodland; Seek to optimise the amount of renewable energy generated on site (to avoid use of fossil fuel heating); and*
- *Seek further clarification of the surface water drainage scheme and how it can be satisfactorily accommodated within the development layout.*

2. That the Ward Member, Downswood and Otham Parish Councils and the Chairman, Vice-Chairman and Political Group Spokespersons of the Planning Committee are to be involved in these discussions.

- The outline application was reported back to Planning Committee on 28 May 2020 along with the full application. Contrary to the recommendation of the Head of Planning and Development, the Committee voted to refuse both applications for 3 reasons:

Ground 1 On Both Applications (Severe Traffic Congestion & Air Quality)

1. The proposal will result in severe traffic congestion on local road networks (Deringwood Drive, Spot Lane, Mallards Way and Madginford Road) and the increase in traffic will adversely affect residents to the point that air pollution is beyond what is reasonable for the Council to accept contrary to Policies H1(8) criteria 9, DM1 and DM6 of the Maidstone Borough Local Plan 2017.

Ground 2 On Both Applications (Highway Safety on Church Road to the South of the Site)

2. The proposal will result in worsening safety issues on Church Road to the south of the site which has not been addressed and due to the constraints of the road likely will never be able to be addressed contrary to policy DM1.

Ground 3 On Both Applications (Harm to the Setting of Listed Buildings)

Outline

3. The proposal will adversely affect the settings of the Grade I listed Church and other listed buildings contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 where the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.

Full

3. The proposal will adversely affect the settings of the Grade I listed Church and Grade II listed Church House contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 due to the visual effect of the whole development in both long and short-term views and the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.

- In the view of the Head of Planning and Development, in consultation with the Legal officer present, those reasons would not be sustainable at appeal and would more likely than not cause significant costs to be incurred. Therefore, in accordance with the constitution, the decisions of the Planning Committee were deferred to its next meeting on 25 June 2020.
- The applicant lodged an appeal for non-determination with the Planning Inspectorate (PINS) on 11 June 2020 for the outline application which means that the decision on the application sat with PINS and not the Council. Any decision made by Members on this application was now to inform PINS what decision the Council would have made.

- At the Committee meeting on 25 June 2020 Members resolved to refuse (or in the case of the outline indicate it would have refused) both applications for the following two reasons:
 1. ***Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***
 2. ***The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely to not be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***
- The Head of Planning and Development on the advice of the Legal Officer present and in consultation with the Chairman, referred both applications to the Policy and Resources Committee as the Planning Referral Body for determination.
- The Policy and Resources Committee convened as the Planning Referral Body on 13 July 2020 and resolved that permission be refused for the same reasons given at the Planning Committee contrary to the recommendation of the Head of Planning and Development.
- The Inquiry was held by the Planning Inspectorate on 23-27 November 2020 and 30 November 2020. With the Planning Appeal decisions made on 7 January 2021. The Inspector found that:
 - Whilst there would be an impact on congestion that this would not constitute a conflict with Policy DM21 of the Local Plan. Furthermore, the potential congestion that would be caused to Willington Street would not be of an extent that can be considered to constitute a severe residual impact in the context of paragraph 109 of the NPPF.
 - That the proposed developments would not demonstrably cause worsening safety issues on Church Road to the south of the site. Consequently, the proposals would not have a material detrimental effect on the safe and efficient operation of the highway network in the vicinity of the appeal site. As such there would be no conflict with the relevant policies contained within the Local Plan.

The Planning Inspector made the following decisions:

Appeal A

1. The appeal is allowed, and outline planning permission is granted for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping, and open space. Access to be considered in detail and all other matters reserved for future consideration at Land West of Church Road, Otham, Kent ME15 8SB in accordance with the terms of the application, Ref 19/501600/OUT, dated 27 March 2019, subject to the conditions set out in the attached schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping at Land West of Church Road, Otham, Kent ME15 8SB in accordance with the terms of the application, Ref 19/506182/FULL dated 6 December 2019, subject to the conditions set out in the attached schedule.

Application for costs

3. At the Inquiry an application for costs was made by Bellway Homes Limited against Maidstone Borough Council in relation to both appeals. That application is the subject of a separate Decision.
- On 7 January 2021 the cost decision was issued allowing for a partial award of costs against the Council.
 - Policy and Resources Committee on 20 January 2021 agreed a motion for a legal opinion to be obtained regarding whether there was a prospect of the Council successfully challenging the Inspector's decision concerning the two planning appeals relating to land west of Church Road, Otham in the High Court.
 - On 3 February 2021 the Policy and Resources Committee met and considered that advice and it was agreed that legal proceedings against the inspector's decisions would not be pursued. The Committee did request a review of the whole process to identify any lessons for the future, resulting in this report.

3. Findings based on Key Lines of Enquiry

Whether Officer advice to Members was appropriate (throughout the process)

- 3.1 The Member survey and interviews carried out with Councillors has identified that there are mixed views on the role of planning officers with some councillors identifying that planning officers should have given more weight to the objections raised by the highways authority and done more to support the committee in its objections and others stating that the advice was professional and appropriate throughout.
- 3.2 There appears to be some confusion as to the role of planning officers in assisting the Committee when formulating grounds for refusal – which go against their own recommendation and professional judgement. Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, the RTPI code of conduct is clear in respect of this within the section on independent professional judgement that:
- "11. Members must exercise fearlessly and impartially their independent professional judgement to the best of their skill and understanding.*
- 12. Members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions, nor knowingly enter into any contract or agreement which requires them to do so."*
- 3.3 The Planning Officer was clear on how the highways objections had been considered and set this out verbally and in his reports to the planning committee, see the later section on statutory objections.
- 3.4 The Head of Mid Kent Legal Services Partnership identified that the guidance to Members at committee meetings was that refusal would expose the Council to a high likelihood of legal challenge because the grounds to be relied upon were not as robust as the grounds to be relied upon for the application to be approved. The position of Officers is to ensure that the best interests of the Council are maintained and to ensure that the Council discharges its statutory duties appropriately and lawfully. The Planning Committee indicated that the application be refused based on particular grounds, in particular the highway objections. To protect the Council, the Planning and Legal Officers advised the Planning Committee and assisted with the formulation of grounds of refusal to avoid the Council being exposed to significant risk.
- 3.5 Officers in this case have given correct advice which was later supported by two different external Counsel's advice and ultimately proved to be correct as evidenced by the decision by the Planning Inspector. From the evidence available I believe they acted in accordance with their codes and statutory

obligations. The opinions expressed by Councillors demonstrate the challenge of the Planning Officer role when dealing with a contentious site with strong public opposition and objections from the Highways Authority that as found at appeal lacked the evidence to be substantiated.

Recommendation

- a) That external planning training on the officer role and role of statutory consultees is provided to Councillors appointed to Planning Committee and the Planning Referral body as part of the annual Councillor development programme

Whether the Local Plan site criteria were adhered to at all stages of the planning process regarding this site

3.6 Church Road, Otham is one of five sites set out in Strategic Policy 3 of the Local Plan for a south east strategic development location. The specific policy H1(8) allocates the site for 440 homes and requires inter alia strategic highway improvements to the local road network (notably Sutton Road and Willington Street) as well as site specific improvements. Allocation of this site was considered by Maidstone Borough Council through the Local Plan making process including being fully considered at the Examination in public; although not supported by all Councillors it was formally adopted as a site allocation by this council through a decision of Full Council and forms part of the Local Plan adopted in 2017.

3.7 The Inspector's decision is clear that the schemes are not in contravention of the Local Plan as taken from the appeal decision report:

"Whilst there would be an impact on congestion that this would not constitute a conflict with Policy DM21 of the Local Plan."

"I do not consider that the proposed developments would demonstrably cause worsening safety issues on Church Road to the south of the site to the extent that both these appeals should be dismissed. In light of this conclusion, I do not consider that there would be conflict with Policy DM1 of the Local Plan."

3.8 The reports to the Planning Committee for outline permission and the full application included detail on compliance with the Local Plan.

3.9 Feedback from Councillors in interviews and in response to the survey indicated that there appears to be doubt in some Members' minds as to whether this site should ever have been included in the local plan and the implications of that inclusion.

3.10 There were also some concerns expressed by Councillors at Committee meetings that the Local Plan was out of date. This also came out in the survey responses:

"As explained above the Officers appeared to be too committed to decisions taken in the Local Plan which were now five years old"

The Inspector's appeal decision report at para 16 identifies that:

"In adopting the Plan that provided for the allocation of the appeal site, the Council were aware of the impact of development on the local highway network. No substantive evidence was provided in the Inquiry to identify what is different in terms of envisaged traffic flows in 2020 from when the Council decided that the site was suitable for up to 440 dwellings in 2017."

And at para 28:

"The main parties agree that the Council can demonstrate a 5 year supply of land for housing.¹ This being the case, none of the relevant policies in the recently adopted development plan can be considered as being out-of-date. Paragraph 11 (d) of the NPPF is therefore not engaged."

The Local Plan was adopted in 2017, it is a forward looking document setting out plans for the Borough up to 2031. As the Inspector points out, the policies could not be regarded as out of date at the time of the decision. The plan would only become out of date if there was a significant change in national policy set out in the National Planning Policy Framework or as a new Local Plan neared adoption.

- 3.11 Following the adoption of the last Local Plan and prior to the current Local Plan review starting, a review was undertaken with Councillors on the lessons learnt. These lessons informed the Local Plan Review and has resulted in a different spatial strategy. It is apparent from the member responses and the dialogue at committee meetings further training and involvement of all Councillors in the local plan process would be beneficial.

Recommendations

- b) The Member development programme include training on the Local Plan and its significance.
- c) Councillors be encouraged to attend meetings of the SPI Committee on the Local Plan as well as all briefings on the plan and the planning policy team include all political groups in briefings.

The understanding and consideration of the objectors' concerns

- 3.12 At each stage of committee consideration objectors' concerns were reported and considered as evidenced in the reports to Planning Committee. On 24 October 2019 objections were included in the report from:

- Statutory consultees
- Otham Parish Council
- Downswood Parish Council
- Bearsted Parish Council
- Local residents (399 – representations)
- Councillors - the ward councillor Cllr Newton and Councillor McKay.

The reports submitted to Planning Committee following the deferral from October on 28 May 2020 included further objections from a range of local representatives including parish councils, resident's associations, county councillors, and residents, representations were also read out from various objectors and visiting members also gave their representations.

- 3.13 It was identified from interviews with Councillors that training for all Councillors not just planning committee members would aid those wishing to object to planning applications and promote a greater understanding of the process for how objectors' concerns are considered. The Planning Officer identified that a large volume of objections does not result in greater weight given and objections are considered based on material planning considerations.

"A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission).

*The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations."*¹

- 3.14 The planning reports and committee meetings demonstrate that objections were considered. Most Councillors who responded to this matter via a survey or interview confirmed they felt they had been fully considered.
- 3.15 In this case the role of the Highways Authority and their objection, this has greatly affected the decisions made and this is explored later in the report.
- 3.16 When considering objections, the former Planning Committee Chairman identified that it would be beneficial if more members beyond those on the planning committee had planning training particularly to aid them in their ward councillor role. It is evident that the Council should provide more information to the public and councillors on the planning process and in particular the consideration and weight given to objections.

¹ <https://www.gov.uk/guidance/determining-a-planning-application#how-decisions-on-applications>

Recommendations:

- d) More information be provided to the public on the planning process and how objections are considered starting with additional information on the Council's website.
- e) An annual training event be held as part of the Councillor training programme run by an external agency such as PAS on the planning process, objections and how they are weighted and considered to aid councillors in ward work.

Should consideration have been given to applying 'Grampian conditions' in this case.

*"This expression derives from the decision in Grampian Regional Council v City of Aberdeen (1984) and in essence it provides that a condition precluding the implementation of development permitted by a planning permission until some step has been taken is valid."*²

3.17 The argument for Grampian conditions is closely linked to the reasons for refusal and was suggested to overcome the concerns raised by the Highways Authority. The Planning Officer advised that in this case Councillors may have been seeking to put in place conditions relating to highways improvements that must be in place prior to development commencing, however, Grampian conditions must be reasonable. In the case of this site the highways improvements required were not the responsibility of the developer or in their control so a Grampian condition would not have been reasonable.

3.18 Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

3.19 In this case it's a question of what is the absolute minimum that is required that is "relevant to the development to be permitted" and would therefore be considered reasonable. In this instance the Inspector was of the view that the improvements that were included were sufficient to address the issues resulting from the development. A Grampian condition cannot be used to address pre-existing situations or to deal with possible future developments. The Community Infrastructure Levy enables authorities to

² <https://www.planningofficers.org.uk/uploads/news/UseOfGrampianConditions.pdf>

properly develop infrastructure in a planned way, rather than relying on piecemeal site by site works.

3.20 While the Inspector's conclusion was that proposed improvements were sufficient it should be noted that some junction improvements related to the appeal have been made the subject of a Grampian condition.

3.21 I do not believe that the type of Grampian conditions potentially sought in relation to highways improvements would have been reasonable in this case as they are outside of the developers control and include other strategic site improvements which sits with the Highways Authority to deliver.

The significance of Statutory Consultee objections (mainly Highways) and the evidence needed to counteract this.

3.22 Councillors identified that they believe planning officers should have given more weight to the Highways Authority's objection see quote from councillor survey below:

"There was insufficient support from our Officers when it became clear that Members wanted to accept the advice of KCC (Highways) and refuse the application on solely highways grounds rather than accept their advice and grant permission contrary to the advice of KCC (Highways). Our Officers should have been prepared to provide what I would call 'alternative advice' to Members on how they could proceed to refuse the application on highway grounds as recommended by KCC (Highways)."

3.23 The Planning Officer has identified that they give considerable weight to objections raised by statutory consultees and to depart from that objection would require compelling reasons. They have demonstrated this in their reports to committee. The first report to committee outlined the objections from the Highways authority (KCC) and his professional opinion that whilst objections had been raised these were not supported:

"Essentially, the Highways Authority does not consider that the junction and public transport improvements outlined in the Local Plan, and to which monies have been secured, are sufficient to mitigate the impact of the development. This is the same position that was taken under the previous planning applications and at the Local Plan Inquiry by the Highways Authority. So this argument has been tested through planning applications and importantly through an Examination in Public... the mitigation measures are considered sound and are within the adopted Local Plan. On this basis, it is considered that the Highway Authorities objection is not reasonable grounds to refuse planning permission and could not be defended at appeal."

3.24 This advice was correct as independently corroborated and confirmed by the Inspector's decisions.

- 3.25 In the interviews with Councillors and Officers a view has been expressed that it is unusual for the Highways Authority to raise objections and this added additional weight to the objections for Councillors. From reviewing the webcast for planning committee meetings, it is clear some Councillors present identified that as a statutory consultee the objections from KCC must be upheld going against the officer advice. The Planning Officer in his introduction on the outline planning application report in reference to the reasons for deferral stated: "I would reiterate refusal on grounds of congestion on the A229 and A274 and Willington street would be unreasonable and inconsistent as the impact on the south east local plan Maidstone sites including this site has recently been deemed acceptable by the council subject to monies towards mitigation under other planning applications where we assessed cumulative impacts and importantly also by the local planning inspector." Then in response to a question from a planning committee member on overriding a statutory consultee's objection, the officer responded: "in terms of statutory consultees we must give their objections or their views considerable weight but that doesn't mean you can't come to a different view as long as you give clear reasons for doing that." And further "our view is that with a roughly 14% over capacity junction, that is not severe impact and I think that the main point is this goes back to the south east sites, where we accepted, planning committee accepted, officers accepted less than two years ago that sites were granted along the Sutton road within those traffic assessments this site was included so we accepted the cumulative impact of all those sites on the A274, A229 and Willington street was acceptable so we're advising it would be unreasonable now to reach a different view. Councillor Eves referred to that being a number of years ago, well the traffic assessments actually look forward, they go up to 2029 in this application, so it does go into the future, we're basically saying we do not consider it to be severe it is the same position we have consistently taken, and we think there is sufficient grounds for that and to disagree with Highways as the statutory consultee in this case."
- 3.26 The highways objections eventually formed the basis of the decisions for refusal that were considered at Appeal. The Planning Committee Chairman identified that in his opinion the objection from KCC was worth testing as new local issues were raised. However, KCC failed to provide the local evidence needed to substantiate their objections as evidenced in the report and decision of the planning inspector. The Council should reflect on the position it was placed in

"The appeal schemes do not propose anything different to the form of development required by Policy H1(8) of the Local Plan in respect of the location, quantum or the position of the access. Other than the effect on traffic flows that was predicted to occur as a consequence of the development of the SEMSDL sites, no evidence was presented by the Council (i.e. KCC) to suggest that there has been a fundamental change in the traffic data or highway conditions in the Borough since the Local Plan was adopted only three years ago when the traffic implications of the SEMSDL for the plan period to 2031 were comprehensively assessed."

Revised highways modelling was provided for the appeals, however Kent County Council did not quantify or identify a threshold at which impact was severe.

- 3.27 In considering the lessons learnt from this aspect of the case it is worth referencing the RTPI code again. I have reached the conclusion that there needs to be training on this aspect of the code and also the role of statutory consultees:

“11. Members must exercise fearlessly and impartially their independent professional judgement to the best of their skill and understanding.

12. Members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions, nor knowingly enter into any contract or agreement which requires them to do so.”

Recommendation

- a) That external planning training on the officer role and role of statutory consultees is provided to Councillors appointed to Planning Committee and the Planning Referral body as part of the annual Councillor development programme

Whether ward member involvement was sufficient and any improvements that need to be made.

- 3.28 Having considered the evidence and spoken to planning officers the usual processes were followed in respect of this. The ward member has taken every opportunity available to present and make known their concerns with the application, including at the appeal stage. Having been contacted by Cllr Newton as part of this review he continues to express concerns particularly about the heritage aspects of the site.
- 3.29 In the planning application process the roles of Ward Councillors and Committee Members are quite distinct. A Ward Member is free to advocate on behalf of the views of their residents, whatever they may be. When determining an application, Committee Members are bound by planning law, and can only consider material planning considerations, and adopted policy. The same applies to a Planning Inspector at appeal. In this instance it seems to me that Committee Members and the Inspector considered the representations made by the Ward Member as far as they were able.

The Transparency of the Process

"Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Planning affects people's lives and land and property

interests, particularly the financial value of landholdings, and the quality of their settings. Opposing views are often strongly held by those involved. Whilst councillors must take account of these views, they should not favour any person, company, group, or locality, or appear to be doing so. Decisions need to be taken in the wider public interest on what can be controversial proposals.”³

- 3.30 I cannot identify any inappropriate conduct in respect of transparency. Increased training and public information about planning would help promote transparency in a very technical legislatively bound process. The Planning Advisory Service have developed advice for Councillors and Officers making planning decisions which is quoted above, it would be beneficial to include this in the training given to members and a link in guidance for new councillors.

4. Lessons Learnt

Statutory Objectors

- 4.1 The views submitted by the Highways Authority were accepted despite officers’ advice that the conclusions reached by the Highways authority were unreasonable. Several factors influenced this including the weight of public objection and the rare instances where the Highways Authority object on planning applications. It should also be noted that the risk and cost of agreeing with the objections sat with Maidstone Borough Council not Kent County Council.

Planning Officer and Planning Committee Roles

- 4.2 During this process there were misplaced expectations in relation to the Planning Officer’s role and that of the Committee when making planning decisions that are against the recommended action.
- 4.3 Greater understanding of the planning system for all councillors would be beneficial.

Local Plan

- 4.4 From reviewing the evidence, meetings, and the comments on the survey there was a lack of understanding of the Local Plan, this can be seen in the assertion that the traffic modelling must be out of date as it was completed for the Local Plan agreed in 2017. Coupled with the lack of understanding is a lack of involvement by all Councillors in the development of the Local Plan.

“It is vital that sufficient care is taken with selecting sites for the Local plan, that officers work as closely and as openly as possible with members, KCC and other consultees including parishes, to make sure

³ <https://local.gov.uk/publications/probity-planning-advice-councillors-and-officers-making-planning-decisions>

everyone understands their obligations and legal requirements”

“Members have to fully understand and accept the legal status of the local plan: it is the basis upon which we consider applications. You can't just change the goal posts after a couple of years. If a site is in the Plan, that is it, there is no going back. This is fundamental to planning training and is the simple principle that was ignored in consideration of this application.”

-As taken from the Member survey

Quality of Advice and Support

- 4.5 Events have shown that the officer and external counsel advice was sound in relation to this decision. For the officers concerned this involved giving professional advice which contradicted the wishes of some Councillors and the importance of speaking truth to power should not be underestimated.
- 4.6 It is also worth referencing again the requirement for both Planning and Legal Officers’ to comply with codes of practice and professional standards. This case led to some behaviours that directly challenged those officers outside of the standards expected. The constitution in Part 4.3 Protocol on Councillor/Officer Relationships sets out within the Officer role at 4.4 “officers have various roles depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs and managing other officers.” Furthermore at 4.9 “As well as following the officers’ code of conduct at part 4.6 of the constitution, an officer may also be subject to the rules and codes of conduct of her/her own particular profession.” The Council also has in place a code of conduct for Councillors which states a number of general obligations expected of Councillors in relation to behaviour when in office.
- 4.7 In summary the Councillor / Officer Protocol requires officers to provide technical guidance to Members and for Members to make decisions on an informed basis to avoid compromising the Council’s position. On occasions the technical/legal guidance may be contrary to the councillor desired outcome. However, the Council is obliged to comply with legal requirements, failing which significant costs will be incurred in responding to Legal challenges.

5 Conclusions

- 5.1 The overriding conclusion I have drawn is that there is clear scope for a more comprehensive programme of training for all Councillors on matters relating to planning and planning applications. This extends to include matters of individual roles and responsibilities, as well as the statutory and regulatory frameworks within which the system operates.
- 5.2 Councillor and public engagement at all stages of the planning process could potentially be strengthened, and more information made available on the Council website, particularly in matters which are high-profile or locally contentious.

- 5.3 Officers, and the role they play in advising Committee, are regulated by their codes of conduct. They have a very limited ability to 'assist' Councillors in formulating reasons which go against their professional judgment or opinion.
- 5.4 The recommendations proposed in the main body of the report should assist in providing a greater understanding of the planning system and in how applications should be considered.

Church Road Otham – Planning Review – Member Feedback

The survey was sent out to current Councillors who had participated in the process as committee members and to the ward Councillor.

A total of seven feedback responses were received.

- Three from Members of Planning Committee.
- Three from Policy & Resources Committee (acting as the Planning Referral Committee).
- One from a member that was on both committees.

Planning Committee Only Questions

Question: As a planning committee member what went well with how this application was processed, what could have been improved? – 3 responses.

Nothing went well with this application. It should never had to go to 3 committees before finally going to appeal. This site should never have been included in the 2017 Local Plan which was one of the reasons that it was impossible to overturn.

A lot of pressure was put on Members. Officers put too much emphasis on the Local Plan and did not take into account that a lot had happened since.

The Officers' reports were as comprehensive as ever and reflected their sincere professional advice on the planning issues concerned. The key difficulty was that Members were not prepared to accept their advice in relation to the highway implications of the application where KCC (Highways), our Statutory highway advisors, had provided advice contrary to that of our own Officers. In the light of Members' feelings on these highways issues, our Officers should have been prepared to help Members draft reasons for refusal based on the advice of KCC (Highways) rather than refusing to help by insisting that their highways advice was correct and that KCC (Highways) advice was wrong. It is for Members to decide whether to go with the advice of our own Officers or that of KCC (Highways).

Question: Do you understand your role as a planning committee member and the role of planning officers? Do you have any concerns about this? – 4 responses.

I do understand the differing roles. I do think that the planning officers need to take much more notice of local residents views when it comes to Highways issues as the residents have to deal with the eventual outcome if the decision goes against their views.

Yes; we generally work well together and there is a very good relationship. But this case felt different there was, as stated above, a lot of pressure for Members too agree this application despite the strongly held views and local knowledge of Members.

I think that I fully understand the roles of Officers and Members. I have no concerns about their roles except in relation to what I say in Q7.

Yes I understand my role and that of the planning officers.

Question: Was there sufficient support from officers throughout the process? If no at what points and how could it be improved? – 4 responses

I think that the officers should have given far more weight to the highways issues at the beginning of the planning process and liaised with KCC highways to ensure that this development did not go ahead.

Church Road Otham – Planning Review – Member Feedback

As previously stated I believe we have a good working relationship. But in this case the Officers seemed committed to getting the application approved, which meant that defending the application at appeal more difficult. The Officers seemed to be too committed to the Inspector's decision in the Local Plan and not taking into account what had taken place since as well as the position of Kent Highways.

There was insufficient support from our Officers when it became clear that Members wanted to accept the advice of KCC (Highways) and refuse the application on solely highways grounds rather than accept their advice and grant permission contrary to the advice of KCC (Highways). Our Officers should have been prepared to provide what I would call 'alternative advice' to Members on how they could proceed to refuse the application on highway grounds as recommended by KCC (Highways). At Planning Committee meetings when James Bailey sees that Members are moving towards not accepting his advice on an application, he uses the following words to provide 'alternative advice': 'If Members want to go down that route, I would recommend'. Sometimes this 'alternative advice' convinces Members that his initial advice is correct; sometimes it convinces them that it was not and they proceed to make a decision contrary to his initial advice. The key issue is that 'alternative advice' is provided and it is then up to Members to decide which advice to take. This did not happen with the Church Road application when Officers stuck rigidly to their initial advice and refused to supply 'alterative advice' to Members.

We were well supported

Referral Committee Only Questions

Question: Did you understand your role when acting as the planning referral body? - 4 responses.

Yes

Yes

yes

Yes; I am a Member of Policy and Resources Committee but as I am also a member of the Planning Committee I did not take part.

Question: Do you understand your role as a member of the planning referral body and the role of planning officers? Do you have any concerns about this? – 4 responses.

Yes

Having served on the referral committee before I feel I had the skills to inform my decision.

yes. I have no concerns. The roles are clear, distinct and separate

I am concerned at the way this is used. I believe two meetings of the Planning Committee should have been enough. The Planning Committee is a statutory committee and I believe having a referral body made up of Members who are less expert undermines its authority.

Question: Did the advice and support from Officers meet your expectations, if not please explain how

Yes

Yes

Yes. Officers are paid professionals employed by the Council. Their role is to provide members with professional, unbiased advice and to respond to any questions with honesty, factually, and in the light of their professional opinion and experience.

Not in this case, as explained above.

Church Road Otham – Planning Review – Member Feedback

Question: What went well? What could have been improved? – 4 responses
It seemed ok
Overall the process went well. Not sure how improvements could be made considering the protocols we have to work under.
The Council's processes and procedures were carried out properly. Officers were professional at all times. Members of the Planning Committee needed - their understanding of the legal status of the Local Plan improved - their obligation to adhere to / abide by the Local plan to be improved
It did not go well. The positions became rather adversarial. As explained above the Officers appeared to be too committed to decisions taken in the Local Plan which were now five years old.

Do you think the process was transparent, if no how could it have been improved? – 4 responses
Yes
Yes
Yes it was as transparent as it could be in the circumstances
Yes

Planning Committee & Referral Committee Questions

Question: Do you believe you have a good knowledge and understanding of the Local Plan and associated documents and how that applied to this application? – 7 responses
Fairly good.
Reasonable
Yes
yes
Yes
Yes.
Yes. There was also a great deal of discussion/debate during all the Planning Committee meetings held to decide this application. I also have a very well thumbed copy of the current Local Plan to which I refer for guidance.

Was there effective communication between Councillors and Officers and vice versa regarding the application? – 7 responses
I do not know the answer to this question.
Reasonable
I was happy with the communication.
Yes as far as I was concerned.
There was. a lot of discussion but Officers seemed to be committed to achieving approval.
I don't think there was effective communication between Officers and Members at Planning Committee meetings - otherwise we would not be where we are now. As I was just a Planning Committee member, I do not know what communication would have gone on 'behind the scenes'.
Yes

What did you think of the advice given by statutory consultees? -7 responses

Church Road Otham – Planning Review – Member Feedback

I think that KCC should have been far more forceful in their opinion and that more supporting evidence should have been obtained by them in order to have strong and relevant reasons for this application to be turned down by the inspector at appeal.
Biased towards approval, but not surprised
We have to expect statutory consultees opinion this professional advice
The advice given by KCC Highways was inappropriate, misleading, and inconsistent with their views when the site was first put in the Local Plan. They went off at a tangent, introducing opinions that were not strictly relevant to the actual requirements/policies stated in the Local plan
We agreed with Kent Highways who were the experts. Unfortunately the Inspector didn't.
Their advice was sound.
On the whole advice given by statutory bodies was constructive. I do think that perhaps, hindsight being a wonderful thing, we should have placed more emphasis on some of the concerns raised.

Question: Do you feel you understood the objectors concerns and that these were taken into account? – 7 responses

I understood their concerns but on the matter of Highways they were not taken into account.
Yes
I understood these concerns as I do on other matters and these are always taken into account.
Yes, I fully understood and deeply sympathised with the objectors
I totally understood the objectors' concerns but I don't think they were properly taken into account, especially by the Inspector.
I understood the objectors' concerns and considered that they were all fully taken into account.
I read all the objectors correspondence and understood their concerns and these were argued/debated thoroughly at committee.

What lessons should we learn from this application? – 7 response

Make sure that any site put into the local plan is scrutinised to the last degree and that any highways objections are really taken seriously and upheld at inspection.
Spend more time and listen
I do feel 'we' (officers & members) carried out the process the best we could and by the book. Every application such as this is very difficult for everyone to grasp including the public perception of procedures. We can only work with the tools we are given under the law as it currently stands.

Church Road Otham – Planning Review – Member Feedback

1. There was nothing wrong with the application itself. It was well thought through and fully complied with the requirements set out in the Local Plan. Unfortunately it was in the wrong location but that was not the applicants fault, it was our fault. This site should never have been put in the Local Plan in the first place. At that time, we were all under pressure to meet the housing need, Highways were being grossly unhelpful, Members were screaming not to have development in their back yard. We were lucky to get the plan adopted at full council, and some members moan to this day that they don't agree with it.
2. It is vital that sufficient care is taken with selecting sites for the Local plan, that officers work as closely and as openly as possible with members, KCC and other consultees including parishes, to make sure everyone understands their obligations and legal requirements
3. Members have to fully understand and accept the legal status of the local plan: it is the basis upon which we consider applications. You can't just change the goal posts after a couple of years. If a site is in the Plan, that is it, there is no going back. This is fundamental to planning training and is the simple principle that was ignored in consideration of this application.

We should be very sparing in the use of the Planning Referrals Committee. In fact I would ask that this is looked at again. Members of this Committee are not in a better position to contradict the views of the Planning Committee. Officers need to understand better local issues like this which are very sensitive, especially where there are clearly major traffic issues and sensitivity regarding heritage buildings.

That Officers should be prepared to provide 'alternative advice' to Members whenever their initial advice is unacceptable to them. This 'alternative advice' may convince Members that the Officers' initial advice is, in fact, correct or convince them it was not. Whatever; it is for Members to decide.

I honestly think more time could have been devoted to assimilating our evidence when the application was deferred and thereafter when it was refused. Given some of the Inspectors comments following the appeal perhaps we should have strengthened the evidence we provided to defend the Planning Committee's decision. This may have resulted in a more favourable outcome for MBC and our residents.

Further Comments – 3 responses

We "got into this mess" because members of the planning committee, in their ignorance and in determination to defend their locality come what may, thought they could change the provisions of the Local Plan. Future Planning Training must make it abundantly clear that unless something significant happens, the Local Plan must be adhered to. Also, material consideration must be Planning issues, and not to rely solely on Highway issues because we are not the Highway Authority. I rue the day this application got permission by the Inspector - but legally we had no leg to stand on by refusing it. This must not happen again with the Local plan Review. Let this be a stark reminder.

Both reasons for refusal used wording provided by KCC (Highways). An Appeal against this decision was allowed by the Planning Inspectorate. The Inspector disagreed with one reason for refusal but made no award of costs in relation to it. He did, however, make an award of costs in relation to the second reason of refusal due to KCC (Highways) being unable to substantiate it because it had done no traffic modelling for the application site since the preparation of the MBLP (2017) - some 4-5 years previously. It, therefore, seems to me that KCC (Highways) is morally obliged to contribute significantly to the costs that MBC has been required to pay to the applicants. btime of the c eht e s rea

Church Road Otham – Planning Review – Member Feedback

On reflection I question the suitability of including this site in the current Local Plan given its location and the ongoing problems there will be with the road network.

DEMOCRACY AND GENERAL PURPOSES COMMITTEE

23 November 2021

Governance Arrangements Working Group Update

Final Decision-Maker	Council
Lead Head of Service	Angela Woodhouse, Head of Policy, Communications and Governance And Jayne Bolas, Monitoring Officer
Lead Officer and Report Author	Angela Woodhouse, Head of Policy, Communications and Governance
Classification	Public
Wards affected	All

Executive Summary

This report provides an update on the Governance Arrangements Working Group and the planned approach for the drafting of the new constitution.

Purpose of Report

Noting and Decision

This report makes the following recommendations to this Committee: That

1. The Governance Arrangements Working Group membership be amended to add Councillor Munford and Hastie to ensure all groups of the Council are represented.
2. The proposed approach and timetable to the drafting of the new constitution be noted.

Timetable

Meeting	Date
Democracy and General Purposes Committee	26 January 2022
Democracy and General Purposes Committee	16 February 2022
Democracy and General Purposes Committee	9 March 2022
Council	13 April 2022

Governance Arrangements Working Group Update

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>The constitution will ensure effective decision-making processes in place linked to our strategic priorities.</p>	Head of Policy, Communications and Governance
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The constitution will ensure effective decision-making processes in place linked to our strategic priorities.</p>	Head of Policy, Communications and Governance
Risk Management	Covered in the risk section at 5.	Head of Policy, Communications and Governance
Financial	<p>Changing governance arrangements could have financial implications both in terms of member remuneration, the support and advice required to change (i.e., drafting a new constitution) and staffing required to support the change as well as potentially additional ongoing cost to provide and support the new model.</p> <p>It is proposed that the cost for the new</p>	Section 151 Officer & Finance Team

	<p>constitution will be met from reserves.</p> <p>Proposals for any budget growth required will be considered as part of the process of setting a budget for 2022/23.</p>	
Staffing	<p>The proposed model will lead to an increase in the staffing support required from democratic services as there will be an increase in the number of committees and meetings in the model proposed. Committees are appointed by Council and as such may be subject to change.</p>	Head of Policy, Communications and Governance
Legal	<p>The Localism Act 2011 amended and inserted Part 1A of the Local Government Act 2000. The provisions enable a Council to operate one of three permitted forms of governance:</p> <ul style="list-style-type: none"> (a) Executive arrangements; or (b) A committee system; or (c) Arrangements prescribed by the Secretary of State. <p>The executive arrangement may consist of a 'executive' leader and cabinet under the 2000 Act, section 9C(3); or the directly elected mayor and cabinet model of governance under section 9C(2). The executive may not exceed 10 members of the Council, to include the Leader and/or Mayor.</p> <p>The executive arrangement of a Council must include provision for the appointment of one or more overview and scrutiny committees to review and scrutinise executive decisions made, or other action taken – LGA 2000, section 9F.</p> <p>The 2000 Act divides the functions into Council functions, local choice and executive functions. The allocation of functions is prescribed under the Local Authorities (Functions and Responsibilities)</p>	Head of Legal Partnership

	<p>(England) Regulations 2000 (as amended). Anything not listed in these regulations is an executive function.</p> <p>The Council is required to have an up-to-date written Constitution setting out how the Council conducts its business, who takes which decisions and how to work with the Council. The Constitution should contain the Council's Standing Orders, the Code of Conduct, information required by the Secretary of State and other information as the Council considers appropriate – section 9P LGA 2000.</p> <p>The proposals in this report and the appendix are in accordance with the statutory requirements.</p>	
Privacy and Data Protection	No impact.	Corporate Insight, Communities and Governance Manager
Equalities	The recommendations do not propose a change that will require an equalities impact assessment.	Corporate Insight, Communities and Governance Team
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Head of Policy, Communications and Governance
Crime and Disorder	No implications.	Head of Policy, Communications and Governance
Procurement	There will be a need to procure external legal advice to assist with the development of the constitution.	Head of Policy, Communications and Governance
Biodiversity and Climate Change	The implications of this report on biodiversity and climate change have been considered and none have been found.	Biodiversity and Climate Change Manager

2. INTRODUCTION AND BACKGROUND

- 2.1 In September 2021 Council approved the new model of executive governance proposed by Democracy and General Purposes Committee. As part of the proposal, it was agreed that the Governance Arrangements Working Group would continue to operate and review the redrafted significant parts of the constitution prior to Democracy and General Purposes recommendation to Council for adoption.
- 2.2 This report sets out the proposed approach for the working group in completing that work and a suggestion to broaden its membership to ensure all groups have the opportunity to input into the drafting of the new constitution.
-

3. AVAILABLE OPTIONS

- 3.1 On the 30th of June 2021 meeting of the Democracy and General Purposes Committee, it was agreed that a Working Group would be formed to develop the new executive arrangements. The Membership for the Governance Arrangements Working Group (the Working Group) as follows:

Councillor Purle (as Chairman)
Councillor Blackmore (as Vice-Chairman)
Councillor Perry
Councillor English
Councillor M Rose
Councillor Munford (non-voting co-opted member)

- 3.2 To ensure all groups on the Council can contribute to the drafting of the new constitution it is proposed that Councillor Munford be formally added from the independent group and Councillor Hastie be added from the newly formed Maidstone Group.
- 3.3 To take forward the development of the constitution an external expert has been engaged to advise and assist the working group in drafting the new constitution Simon Goacher, a partner at Weightmans LLP.
- 3.4 The following approach has been identified for drafting the new constitution:

Topic	Working Group Meetings	DGP - Committee	Council
Leader and Cabinet <ul style="list-style-type: none">• PACs and OSC• Procedure Rules• Leader's annual speech• Local Choice Functions	Framework 11 November 2021 and 2 nd Meeting TBC November Draft Constitution Sections considered by working group on 9 December 2021	26 January 2022 (publication on 18 January 2022)	

Member Rights <ul style="list-style-type: none"> • Access to Information • Agenda items • Questions • Decision making including key decisions 	Framework – 16 December 2021 Draft Constitution considered by working group on 13 January 2022	16 February 2022 (publication on 8 February 2022)	
Remaining Constitution	Draft Constitution considered by working group on 17 February 2022	9 March 2022 (published on 1 March 2022)	13 April 2022 (published on 5 April 2022)

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The Committee is asked to note the proposed approach and timetable for the development of the new constitution. Whilst changing the Council's model of governance to an executive model will necessitate rewriting/new sections of the constitution several parts will remain unchanged. The timetable proposed reflects this with several meetings set identified to debate changes needed and consider wording ahead of drafting the new document and that being considered by this committee and then full Council
- 4.2 The proposed amendment to the working group membership will ensure that all groups are represented and allow cross council involvement in drafting the new constitution.

5. RISK

- 5.1 To mitigate risk the monitoring officer has engaged external legal support for the development of the constitution.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Democracy and General Purposes through the governance arrangements working group have been involved in the development of the new executive model as a Member-led process. Consultation has previously been carried out via councillor survey as part of the development of the new model and this will inform the development of the new constitution.
- 6.2 Council approved the next steps for developing the new executive model of governance at its meeting in September as outlined below:

Activity	Date	Purpose
Publication of Proposals	October 2021	Publish Proposals and required notices
Working Group	October 2021 to March 2022	Develop Constitution
Officers	October 2021 onwards	Officers to develop staffing to support new arrangements ready for 1 May 2022
Panel	January - March 2022	Members Allowance Scheme reviewed
DGP	March 2022	Recommend constitution to Council
Council	April 2022	Approve Constitution and members Allowance Scheme

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 The next steps are set out at 3.4 of this report. As sections of the constitution are drafted they will be submitted to this Committee for approval and the new constitution will be submitted to Council in March 2022.

8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

Report to Council 29 September 2021 – New Executive Model

Agenda Item 17

Democracy and General Purposes Committee

23 November 2021

Whole Council Elections – Further Options

Final Decision-Maker	Democracy and General Purposes Committee
Lead Head of Service	Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Ryan O’Connell, Democratic and Electoral Services Manager
Classification	Public
Wards affected	All

Executive Summary

This report provides the further options on Whole Council Elections as requested by the Committee in its resolution on 8 September, in response to a 2/3rds majority of those voting at Council not voting for the committee’s recommendation of adopting whole council elections.

Purpose of Report

Noting

This report makes the following recommendations to this Committee:

That the options available on whole council elections be noted.

Timetable

Meeting	Date
Democracy and General Purposes Committee	23 November 2021

Whole Council Elections – Further Options

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	No direct impacts as this report is for noting.	Democratic and Electoral Services Manager
Cross Cutting Objectives	No direct impacts as this report is for noting.	Democratic and Electoral Services Manager
Risk Management	No risks as this report is for noting.	Democratic and Electoral Services Manager
Financial	There is an estimated additional cost of £50k in conducting a poll discussed in the report, however the recommendation is for noting.	Democratic and Electoral Services Manager
Staffing	None as this report is for noting.	Democratic and Electoral Services Manager
Legal	<p>The legislation governing the move to Whole Council Elections is the Local Government and Public Involvement in Health Act 2007 as amended by the Localism Act 2011. The Act gives Councils the power to decide whether to move to whole council elections, elections by halves or elections by thirds. The legislation to move to whole council elections includes certain actions that must be taken during the process.</p> <p>The report also considers the process required under the Council's constitution, primarily under part 3.1 procedure rule 21.2.</p> <p>This report also considers the power to conduct a local poll under section 116 of the Local Government Act 2003. The report considers the application of this power and advises that further legal advice is provided in the event they wish to use it for this purpose.</p>	Democratic and Electoral Services Manager

Privacy and Data Protection	None.	Democratic and Electoral Services Manager
Equalities	None.	Democratic and Electoral Services Manager
Public Health	None.	Democratic and Electoral Services Manager
Crime and Disorder	None.	Democratic and Electoral Services Manager
Procurement	None.	Democratic and Electoral Services Manager
Biodiversity and Climate Change	None.	Democratic and Electoral Services Manager

2. INTRODUCTION AND BACKGROUND

- 2.1 At its meeting on 8 September 2021 the Committee resolved that officers bring back a report on further options for whole council elections, including a referendum, in the event that a 2/3rds majority of those voting was not achieved at Council on the adoption of whole council elections. This report meets the requirement of the committee following the vote at an Extraordinary Council meeting held on 29 September 2021.
- 2.2 At this stage the committee are asked to note the options available.

3. AVAILABLE OPTIONS

- 3.1 Option 1 – Members could bring forward a motion, in the usual way, for whole council elections after the elections in May 2022 when the membership of the Council may well have changed.
- 3.2 Option 2 – Members could bring forward a motion in 2021/22 for Council to reconsider the motion on Whole Council Elections. However, in order for Council to reconsider a matter it has already determined either 6 months will need to have elapsed from the previous decision, or the motion would

need to be signed by at least one third of the whole number of Council Members (19 Members) (Council's Constitution Part 3.1, Procedure Rule 21.2).

- 3.3 Option 3 – The Democracy and General Purposes Committee could request that the matter is looked at again and place it onto their work programme with a view to a future Council decision at least 6 months after Council's original decision has elapsed.
- 3.4 Please note that any decision on whole council elections must have had a consultation carried out with the public prior to being taken. Whilst any decision taken reasonably soon on whole council elections could be deemed to be valid due to the consultation undertaken in July/August 2021 any significant delay to reconsidering the matter would require a further consultation to be conducted.
- 3.5 Option 4 – Conduct a Poll - whilst the previous consultation would currently be valid for any whole council elections decision, the Democracy and General Purposes Committee could request that a poll is carried out under section 116 of the Local Government Act 2003. This power to hold a poll under section 116 is not a referendum (for which no local government power exists in regard to this matter) but allows a council to conduct a poll and the electoral register can be used for that purpose (section 116 is one of the few defined purposes the electoral register can be used for).
- 3.6 Section 116 sets out the following:

116 Local polls

- (1) A local authority may conduct a poll to ascertain the views of those polled about—*
 - (a) any matter relating to—*
 - (i) services provided in pursuance of the authority's functions, or*
 - (ii) the authority's expenditure on such services, or*
 - (b) any other matter if it is one relating to the authority's power under section 2 of the Local Government Act 2000 (c. 22) (authority's power to promote well-being of its area).*
- (2) It shall be for the local authority concerned to decide—*
 - (a) who is to be polled, and*
 - (b) how the poll is to be conducted.*
- (3) In conducting a poll under this section, a local authority must have regard to any guidance issued by the appropriate person on*

facilitating participation in a poll under this section by such of those polled as are disabled people.

- 3.7 The section 116 power is generally regarded as having been drafted as a wide power to encourage public involvement in Council decisions but there is a question of whether such a power would apply to the frequency of elections and whether this matter constitutes *services provided in pursuance of the authority's functions*. However, given the legislation on whole council elections requires a consultation to be carried out, and elections have a direct impact on the provision of council services and finances, particularly electoral registration and more widely how services are delivered in the election period of each year it is likely a poll could be conducted in such a way as to meet this requirement. But this would need to be confirmed with a legal opinion prior to commitment if this is a route that the committee were minded to follow in the future.
- 3.8 The cost estimate for carrying out such a poll could be reduced to £50k, if combined with the May 2022 election. This estimate arises from the full cost of conducting the poll in 8 wards (those are not scheduled as part of the May 2022 election) and of combining with the remaining 18 wards where elections would already be held. This includes additional costs of counting, staffing, communications and printing.
- 3.9 The outcome of the poll could then be used to either inform a future decision on whole council elections at local level, or to lobby the Secretary of State for change. However, the chances of lobbying being successful are considered to be extremely low as the Secretary of State historically has only intervened in a council's election cycle when there are serious issues at an authority already under investigation.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 That the options are noted and further legal advice is sought on conducting a poll should that option be considered in the future.

5. RISK

- 5.1 None directly, but if any options are pursued in future individual risks would need to be assessed for each option.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 None.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 None as the report is for noting.

8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

None.