

HARBOROUGH DISTRICT COUNCIL

**REPORT TO THE CONSTITUTIONAL REVIEW COMMITTEE MEETING OF 12
NOVEMBER 2019**

PUBLIC REPORT: Y

EXEMPT REPORT: N

Report Title	Review of the Constitution – Planning call- in
Report Author	Verina Wenham Chief Officer, Governance and Monitoring Officer
Recommendation	<ol style="list-style-type: none"> 1. That Members consider the proposal set out in paragraph 2.5 of this report and; 2. Refer any recommendations to Council for approval and adoption.
Purpose of Report	To enable Members to consider the proposed amendments to the current provisions for the “call-in” of planning applications to Council under Part 3 Section B of the Constitution
Reason for Decision	The Council has to ensure that it has in place a robust Constitution and that it should be reviewed regularly to ensure that all decisions are taken effectively and efficiently within the principles of open and accountable local government. The proposals put forward seek to ensure that the Constitution remains operationally effective.
Portfolio (holder)	Councillor Bateman
Corporate Priorities	<ul style="list-style-type: none"> • The Place: An enterprising, vibrant place • The People: A healthy, inclusive and engaged community • Your Council: Innovative, proactive and efficient
Financial Implications	None as far as this report is concerned.
Risk Management Implications	None as far as this report is concerned
Environmental Implications	None as far as this report is concerned
Legal Implications	As set out in the body of this report
Equality Implications	None as far as this report is concerned
Data Protection Implications	None as far as this report is concerned
Consultation	The proposals will be considered by this Committee prior to any recommendations being considered for approval and adoption by Council.
Background Papers	Constitution: May 2019

	Local Government Act 1972 Counsels' Advice: Exempt by virtue of paragraph 5 of Schedule 12A of the Local Government Act 1972
Appendices	N/A

1. Introduction

- 1.1 In 2014 the Council commissioned a review of the Constitution, part of which was to consider the provision allowing the “call in” of a decision of the Planning Committee to Council. Concerns regarding the use of this power had been raised as part of the Peer Challenge in 2013, and as such it was appropriate that the Council considered whether any changes should be made. Following a thorough consideration, members decided that the ability to call in a planning decision should be retained, however, the procedure for affecting this was clarified, and the constitution was amended in 2016.
- 1.2 The Constitution is a living document and the Council is required to keep it under review to ensure that it remains robust and fit for purpose, and as such, members are asked to consider whether any changes are required.

2. Key Facts

- 2.1 The determination of planning applications is a council decision and as with the majority of local planning authorities, the power to determine planning applications has been delegated to a committee, and in the case of Harborough District Council this power has been delegated to the Planning Committee, under Section 101 of the Local Government Act 1972.
- 2.2 Under paragraph B1.4 of Part 3 of Section B of the Constitution, the Planning Committee may make a resolution but, following call in, its resolution can be revoked (so long as formal notice of planning permission has not been given). The Council then arrives at a new resolution in reliance of Section 101(4) of the Local Government Act 1972:

“Any arrangements made by a local authority or committee under this section for the discharge of any functions by a committee, sub-committee, officer or local authority shall not prevent the authority or committee by whom the arrangements are made from exercising those functions”

- 2.3 It is the ability for the Council to have the opportunity to reconsider the application after it has been fully debated and determined by the Planning Committee that was highlighted as a risk, and that could result in a potential legal challenge. Following the receipt of independent advice, it is clear that the procedures the Council has in place greatly minimise any risk of this, however, from a decision making perspective, there is an argument that it is better for both the public and the applicant that there is certainty of outcome when a decision is taken.
- 2.4 As set out in paragraph 2.2 above, the fact that the planning function has been delegated to the Planning Committee does not prevent the full Council from exercising that function. However, it may be more appropriate that the decision to refer the matter to Council is taken prior to the Planning Committee considering the application. Therefore it is suggested that members consider amending the Constitution to remove the existing “call in” provision and replace it with the suggestion set out in paragraph 2.5 below.
- 2.5 Removal of call-in, but with explicit ability of the Planning Committee to refer up to Council.

Referral up to Council by Planning Committee

- a) At the beginning of a meeting of the Planning Committee any Member of the Committee may move that a specified planning application which is an item of business for that meeting be referred up to full Council. The Member must identify the grounds of significance justifying the motion. If the motion is seconded, the proposition shall be open to debate.
- b) There shall be no debate on the contents of the report relating to the specified planning application itself. Debate shall be limited to consideration as to whether the item is of such significance as to justify referral up to full Council notwithstanding the delegation of decision-making powers.
- c) If the motion to refer up is carried, the item shall not be determined at the meeting, but shall stand referred to the next ordinary meeting of the full Council. If the referral up is not made in time for the matter to be included on the agenda for the next ordinary meeting, it shall be considered at the first subsequent ordinary meeting of the full Council. However, if the Head of Paid Service considers that it is in the Council’s interests to determine the matter before the next scheduled ordinary meeting, the matter may be considered at a special meeting of the full Council.
- d) If the motion to refer up is not carried, the item shall be dealt with in accordance with the Committee’s delegated powers.

- 2.6 The above text would replace the sub-paragraph headed “Planning Committee Call-in” in paragraph B.1.4.

- 2.7 This would make explicit the inherent ability of the Planning Committee to cede its delegated powers on particular applications. Members would need to identify the overall importance of the matter in advance rather than wait to see how it was dealt with at Committee before deciding if they felt that full Council should review a decision. This should encourage a position where only planning applications with wider significance are considered by full Council.