
Changes to Part 2, Part 3 and Part 4, Section 1 of the Constitution

(additions shown in bold, italic text, deletions struck through)

Part 2 – Description of the Constitution

Non-Executive Committees

- 2.11 Non-Executive committees carry out a number of regulatory functions mostly where a matter may not be decided by the Cabinet or by individual Cabinet Members (the Executive). Although these committees are described as 'non-Executive' they do take decisions. The non-Executive committees are the Planning Committee and the Rights of Way Committee, whose work is described by **its** their names, the Regulation, Audit and Accounts Committee (which deals with audit, accounts and regulatory functions), the Pensions Committee and the Appeals Panel. Their purpose and terms of reference are set out in the Scheme of Delegation Part 3.

Part 3, Appendix 5 – Terms of Reference of non-executive committees

Planning and Rights of Way Committee

Constitution

Thirteen members of the County Council. Quorum is four.

Terms of Reference

To exercise the following functions relating to town and country planning and development control:

1. To exercise the **statutory** non-~~Executive~~ powers and duties of the County Council pursuant to the Town and Country Planning Act 1990, the Highways Act 1980 and the New Roads and Street Works Act 1981 and the Planning and Compulsory Purchase Act 2004, the Planning and Compensation Act 1991 and the Environment Act 1995.
2. To determine applications for planning permission in respect of County Matters – minerals and waste under Sections 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990.
3. To determine applications for planning permission by the County Council under Section 316 of the Town and Country Planning Act 1990 and of the Town and Country Planning General Regulations 1992 (SI 1992/1492).
4. To determine applications for planning permission for development already carried out under Section 73A of the Town and Country Planning Act 1990.
5. To decline to determine an application for planning permission under Section 70A of the Town and Country Planning Act 1990.

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6. To make planning obligations regulating the development or use of land under section s106 and section 106A of the Town and Country Planning Act 1990 and other enabling legislation.
 7. To determine an application for a certificate of appropriate alternative development under Section 17 of the Land Compensation Act 1961.
 8. To determine an application for a certificate of lawful use or development under Sections 191-194 of the Town and Country Planning Act 1990.
 9. To determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject, under paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991 (c.34), paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c.25) and paragraph 6(5) of Schedule 14 to that Act.
 10. To grant or refuse planning permission for development without complying with conditions to which previous planning permission is subject, under Section 73 of the Town and Country Planning Act 1990.
 11. To serve a planning contravention notice, temporary stop notice, breach of condition notice or stop notice, under Sections 171C, 171E, 187A and 183(1) of the Town and Country Planning Act 1990.
 12. To issue an enforcement notice under Section 172 of the Town and Country Planning Act 1990 and to seek injunctions to restrain breaches of planning control under Section 187B of the Town and Country Planning Act 1990.
 13. To serve completion notices under Section 94 of the Town and Country Planning Act 1990.
 14. To appoint members of the County Council to outside bodies which relate to the non-Executive functions of the Committee.
 15. To exercise functions relating to sea fishers under Sections 1, 2, 10 and 19 of the Sea Fisheries Regulation Act 1966 (c.38).
 16. To advise the Executive on such aspects of the Development Plan as relate to the Committee's functions.
 17. To exercise the power under Section 102 of the Town and Country Planning Act 1990 in relation to the requirement to discontinue the use of land.
 18. To exercise the power to acquire a listed building in need of repair under Section 47 and 48 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
 19. To seek an injunction in relation to a listed building under Section 44A of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
 20. To determine applications for hazardous substances consent and related powers under Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990.

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21. To authorise investigations of breaches of Regulations made under section 54 of the Clean Neighbourhoods and Environment Act 2005, including the power of entry into premises.
 22. To authorise the entry onto land under section 196A of the Town and Country Planning Act 1990.

To exercise the following functions in relation to rights of way:

23. ***To exercise the statutory non-executive powers and duties of the County Council in relation to public rights of way (which includes, but is not limited to, public footpaths, bridleways, byways open to all traffic and restricted byways).***
24. ***To exercise the statutory non-executive powers and duties of the County Council in relation to commons and town or village greens.***

To exercise the following functions in relation to town and country planning and rights of way

25. To review and adjust delegations to officers within the functions delegated to the Committee.
26. To delegate powers, when appropriate and on the recommendation of the Director of Law and Assurance, to another local authority ~~including a borough or district borough council~~ and to be able, subsequently, to review, amend or withdraw that delegation.
27. To consider a petition in accordance with the Petitions Scheme in accordance with Standing Order 3.43 (b).

~~Rights of Way Committee~~

~~Constitution~~

~~Nine members of the County Council. Quorum is three.~~

~~Terms of Reference~~

- ~~1. To exercise the statutory non-executive powers and duties of the County Council in relation to public rights of way (which includes, but is not limited to, public footpaths, bridleways, and byways open to all traffic and restricted byways).~~
- ~~2. To exercise the statutory non-executive powers and duties of the County Council in relation to commons and town or village greens.~~
- ~~3. To review and adjust delegations to officers within the functions delegated to the Committee.~~
- ~~4. To delegate powers, when appropriate and on the recommendation of the Director of Law and Assurance, to another local authority including a borough~~

or district council and to be able, subsequently, to review, amend or withdraw that delegation.

5. ~~To consider a petition in accordance with the Petitions Scheme in accordance with Standing Order 3.43 (b).~~

Part 3, Appendix 4 - Delegation Codes of Practice

Development ~~Management Control~~ - Delegation Code of Practice

The proposed framework in which the powers delegated to the Director of **Highways, Transport and Planning** ~~Property and Assets~~ relating to the determination of applications for planning permission and the County Council's response to consultations by district **and borough** councils, **and the South Downs National Park Authority (SDNPA)** is to operate as set out in the Code of Practice below which provides the safeguards for the process of delegation. It should be remembered that officers will have discretion to determine a matter, but will aim to err on the side of caution in deciding whether to exercise that discretion.

Notification

- i. In the case of any new application for planning permission (i.e. a County Matter, or a Regulation 3 application), each member of the County Council will receive notification by a schedule included in The Bulletin which will also indicate where possible whether the application is to be determined under delegated powers. The list will indicate the local member, and in the case of applications having a wider significance, adjoining division members. The application will not be determined for a period of 21 days from the date of notification in The Bulletin.
- ii. In the case of a consultation (i.e. District Regulation 3 or Regulation 4 consultation, or strategic consultation under Schedule 1 of the Town and Country Planning Act 1990) each member of the County Council will receive notification by a schedule included in The Bulletin which will also indicate where possible whether the consultation is to be determined under delegated powers. The list will indicate the local member, and in the case of applications having a wider significance, adjoining division members. The consultation will not be determined for a period of 10 days from the date of notification in The Bulletin.
- iii. In the case of enforcement action the local member will be notified by e-mail.

Members' Views

Any member wishing to express a view must do so to the Director of **Highways, Transport and Planning's** ~~Property and Assets'~~ nominated officer as stated on the notification within the appropriate period (10 or 21 days) and the member's view will then be taken into account in reaching a decision. If a member expresses a view contrary to the view of the Director of **Highways, Transport and Planning** ~~Property and Assets~~ that the consultation or application should be determined under delegated powers, that acts as a veto barring the delegation, unless otherwise agreed with the member, after discussion of the issues involved. In those circumstances applications for planning permission must be determined by the Planning **and Rights of Way**

Committee and consultations will be referred to the Cabinet Member for Highways and Infrastructure. If a member wishes to exercise a veto in this way, it must be communicated to the Director of **Highways, Transport and Planning** ~~Property and Assets~~ within the appropriate notification period (10 or 21 days).

Objections

In respect of applications for planning permission by the County Council under Regulation 3, where, as a result of the consultation process, a statutory consultee ~~(which includes a borough or district or town or parish council)~~ objects in writing to a proposal, or there are written substantive material objections from members of the public the delegation is barred.

Conformity with County Council Policies

Delegated authority decisions will only be made in accordance with the County Council's stated policies. Recommendations on applications ~~which~~ **that** would depart from this requirement must be reported to the Planning **and Rights of Way** Committee or, in the case of consultations, to the Cabinet Member for **Environment** ~~Highways and Infrastructure~~.

Monitoring

All decisions on planning applications, other than consultations, determined under delegated powers will be reported **every six months** ~~regularly~~ to the Planning **and Rights of Way** Committee so that such delegated decisions can be monitored.

Rights of Way - Delegation Code of Practice (Public Path Orders, Definitive Map Modification Orders, Town and Village Green Applications and corrections to Common Land and Town and Village Green Registers)

Public Path Orders

The proposed framework in which the powers delegated to the Director of Highways, Transport and Planning in consultation with the Director of Law and Assurance relating to public path extinguishment orders, public path diversion orders, public path creation agreements, public path creation orders (collectively known as public path orders), providing comments to district/borough councils on applications they are determining, permissive path agreements and dedication agreements is to operate as set out below which provides the safeguards for the process of delegation. It should be remembered that officers will have discretion to determine a matter but will aim to err on the side of caution in deciding whether to exercise that discretion.

Local Member Notification

New application/consultation/proposal(s) will be reported within two weeks' of receipt in The Bulletin and again when the public consultation process is begun. The list will indicate the local member and, in the case of applications having a wider significance, adjoining division members. The application/consultation/ proposal will not be decided for a period of 21 days from the latter date of notification in The Bulletin.

Any local member (or adjacent division member where appropriate) wishing to express a view must do so to the Director of Highways, Transport and Planning's nominated officer as stated on the notification within the 21-day period and the member's view will then be taken into account in reaching a decision. If a member disagrees with the view of the Director, in relation to the delegation, and this is within the 21-day period, the matter will be referred to the **Planning and** Rights of Way Committee for determination. If the causes of disagreement can be resolved through discussion, the delegated action can proceed. This will apply to all applications/responses to district/borough consultations/ proposals.

Objections from County Local Committees, district and parish councils, Sussex Police and interested user groups

In respect of applications for public path orders where, as a result of the consultation process, a borough, district, town or parish council, the County Local Committee or a prescribed user group objects in writing to the application, the delegation is barred.

Objections from the public

In respect of applications for public path orders where, as a result of the consultation process, there remain outstanding substantive comments from members of the public, the delegation is barred.

Definitive Map Modification Orders (DMMO)/Town and Village Green (TVG) Applications and Corrections to Common Land/TVG Registers

The proposed framework in which the powers delegated to the Director of Law and Assurance relating to definitive map modification order applications, village green applications and applications to amend the commons and village green registers is to operate as set out below, providing safeguards for the process of delegation. It should be remembered that officers will have discretion to determine a matter but will aim to err on the side of caution in deciding whether to exercise that discretion.

Local Member Notification

New applications for DMMO, TVG and to amend the Commons/TVG registers will be notified to the local member for information by email within two weeks of acceptance of a valid application.

Significant evidence in conflict

There are strict legal tests associated with such applications and relevant evidence will be needed. Objections are often received which must be discounted, for example where the objection is that a route is not suitable for use. Such objections would be discounted even if large in number or from other local authorities or prescribed user groups. In other cases there may be significant evidence in conflict. Where such significant evidence exists the delegation is barred and the determination then rests with the **Planning and** Rights of Way Committee. Where there is uncertainty the officers will undertake the necessary report, setting out whether the legal tests have been met and explaining the evidence in conflict and a discussion will take place with the Chairman of the **Planning and** Rights of Way Committee and the local member about whether the delegation should be barred.

No significant evidence in conflict received

Where no significant evidence in conflict has been received the matter shall be determined by officers. The officer's report will be signed off as a delegated decision.

Report of Delegated decisions

All decisions on applications determined under delegated powers will be reported **every six months** to the next meeting of the **Planning and** Rights of Way Committee **so that such delegated decisions can be monitored.** ~~for the Committee to note and monitor.~~

Part 4, Section 1 – Standing Orders

7. Non-Executive Committees

- 7.01 The provisions in Section 3, Decision-making and Committees General apply to non-executive committees, who receive their decision-making powers direct from the County Council. The following provisions apply specifically to non-executive committees.
- 7.02 In the event of a non-executive committee deciding any matter which has implications for the functions carried out by the Cabinet or a cabinet member, and the Cabinet or cabinet member not accepting those implications, the matter shall be determined by the County Council on recommendation from the Governance Committee.

Substitutes for Planning and Rights of Way Committees

- 7.03 Substitute members are permitted to attend a meeting of the Planning Committee and the Rights of Way Committee.
- 7.04 The County Council will, at each annual meeting, nominate a panel of substitutes for the Planning Committee and the Rights of Way Committee.
- 7.05 If a member is not able to attend a meeting, his or her political party may arrange a substitute by giving appropriate notice to the Director of Law and Assurance in writing, including the name of the member to attend in his or her place from the appropriate panel of substitutes.
- 7.06 The notice should be given by the appropriate Group Leader, Deputy Group Leader, Group Secretary or Group Chairman to the Director of Law and Assurance by 5.00 p.m. on the day before the meeting if possible and not later than the start of the meeting.
- 7.07 Members appointed as substitutes are in the same position in terms of responsibilities and duties as any other member of the committee, for example in relation to the declaration of any interest they might have.

Planning *and Rights of Way* Committee decisions

- 7.08 If the Planning *and Rights of Way* Committee is minded to refuse an **planning** application under Regulation 3 of the Town and Country Planning General Regulations 1992 or grant consent subject to a condition or conditions which may be unacceptable to the relevant Cabinet Member:
- (a) The Planning *and Rights of Way* Committee will not determine the application but will indicate its decision in principle.
 - (b) The officers of the County Council will try to overcome the objections to the proposal. If, after further investigation and discussion, they conclude that the Planning *and Rights of Way* Committee's decision is justified, the decision will be implemented. If, on the other hand, they conclude that a re-submission or modification is not appropriate because the original proposal remains the best option, or the condition or conditions in dispute impose an unreasonable demand on the implementing committee, a report will be made to the Planning *and Rights of Way* Committee.
 - (c) In the event of the Planning *and Rights of Way* Committee sustaining its original decision it will proceed only by way of recommendation to the County Council.
 - (d) Any recommendation by the Planning *and Rights of Way* Committee shall include:
 - (i) The full officer report to the Planning *and Rights of Way* Committee, including the views of the applicant Cabinet Member; and
 - (ii) A covering report from the Chairman of the Planning *and Rights of Way* Committee explaining the reason(s) for its refusal which had not been accepted by the applicant Cabinet Member; and
 - (iii) A third report giving legal advice/guidance and indicating the views of other consultees, including the district council and any members of the public who have made representations at the Planning *and Rights of Way* Committee meeting considering the matter.
 - (e) At the County Council meeting hearing the recommendation from the Planning *and Rights of Way* Committee the County Council will act as a planning authority under its statutory powers. The Chairman of the Planning *and Rights of Way* Committee shall introduce the item and the Leader shall respond for the applicant Cabinet Member. The applicant Cabinet Member shall be treated as having a prejudicial interest and shall not participate in the debate nor vote but may remain in the chamber. Members of the Planning *and Rights of Way* Committee shall be treated as having a personal interest.

Public Participation at Planning and Rights of Way Committees

- 7.09 Where a report on a planning application to the Planning *and Rights of Way* Committee or a **rights of way** matter before the ~~Rights of Way~~ Committee for

determination is included on the agenda of the ~~relevant~~ committee the provisions of this paragraph shall apply.

- 7.10 An individual who is either **an** the objector to the proposal, the subject of the application or a supporter (~~which includes applicant, agent or supporter~~), shall be eligible to address the ~~relevant~~ committee subject to the provisions of Standing Order 7.11 below.
- 7.11 This Standing Order shall be read in conjunction with the Protocol on Public Participation at Planning and Rights of Way Committees (Part 5 Section 3). ***Irrespective of whether they have formally commented on the application,*** an individual wishing to address the committee under Standing Order 7.10 must contact the Director of Law and Assurance's representative at least two clear working days before the relevant committee to give notice of their wish to speak, stating the application/matter about which they wish to address the committee and whether they are in favour of, or against the officer's recommendation. The Director of Law and Assurance shall record the receipt of such a request.
- 7.12 The maximum time for parties speaking for and against the application the subject of the recommendation shall be 15 minutes for those parties speaking for the application and 15 minutes for those parties speaking against the application for every relevant item on the agenda.
- 7.13 A maximum of three objectors and three supporters (~~which can be any combination of representatives from the following groups; applicant, agent or supporters of the application~~), shall be permitted to address the committee during such time, subject to a time limit of five minutes each, and they shall be determined in strict order of receipt of request by the Director of Law and Assurance.
- 7.14 The Chairman of the Committee shall have discretion at or in advance of a meeting to increase the number of members of the public permitted to speak if he or she is of the view that to do so would assist the Committee in determining a major or controversial case. In doing so he or she may also increase the maximum time limit for public representations but not the five minutes allowed for each speaker.