

Taunton Deane Borough Council

Planning Committee 4 November 2015

Proposed changes to Constitution – amendments to recommendations at Planning Committee

Report of the Solicitor to the Council

(This matter is the responsibility of Executive Councillor Habgood)

1. Executive Summary

This report seeks Members' views on changes which are being proposed to the Council's Constitution, which if ultimately approved, will allow the Planning Committee to propose that applications for planning permission be determined contrary to the officer recommendation.

At present, the Constitution's definition of "amendment" does not allow this.

2. Background

- 2.1 Following recent meetings of the Committee, officers have been considering possible changes to the procedures under which Members consider applications for planning permission, as set out in Part 4 of the Council's Constitution (Rules of Procedure).
- 2.2 At present, Part 4 paragraph 6 limits the range of potential amendments to substantive motions which may be proposed at Planning Committee. In particular, paragraph 6 states that amendments as proposed "*shall not have the effect of introducing a significantly different proposal or of negating the motion*".
- 2.3 The current arrangements within the Council Constitution in Part 4 operate well at Full Council and at most of the Council's Committees. However, it is arguable that they do not align satisfactorily with the decision making process under which the Planning Committee determines applications for planning permission, where a decision which is entirely contrary to the "motion" (or recommendation) is entirely possible.

- 2.4 Specifically, paragraph 6 prevents Members from proposing that an application should be refused where the officer recommendation is that planning permission should be granted. (Obviously it also prevents Members from proposing that permission be granted where the officer recommendation is for refusal).
- 2.5 Accordingly, the Constitution in its current form has the effect of limiting the Planning Committee's ability to debate applications in a flexible and responsive way (and in this regard differs from virtually every other local authority Planning Committee, including West Somerset).
- 2.6 On two recent occasions at the September Committee, Members voted against the officer recommendation for approval. However as the discussion up to that point had effectively been framed by the officer recommendation, no potential detailed reasons why the applications should/could be refused had been identified. There had also been no detailed debate on whether any such reasons were viable as a justification for refusal, or whether they had a reasonable prospect of being upheld on appeal.
- 2.7 As a result, Members – having voted down the recommendation to grant permission - were placed in a position where they then had to identify reasons which would support the refusal to which they had effectively already committed themselves.
- 2.8 In the view of officers, this current arrangement creates the potential for situations in which Members are placed under pressure to come up – almost retrospectively - with reasons for refusal to justify their rejection of officer recommendations (often in a situation in which the applicant or their agent is in the room). It also deprives the Committee of the opportunity to discuss in detail (and debate) potential reasons for refusal of the application – and if necessary obtain officers' advice on the issues – prior to (rather than after) the point at which Members have still to reach an overall view on the application i.e. at a time when a discussion on the viability of a decision contrary to officer recommendation can still have a meaningful influence on the Committee's ultimate decision.
- 2.9 Officers' view is that such difficulties can be avoided in future by a straightforward amendment to paragraph 6 of the Rules of Procedure, insofar as it applies to Planning Committee.
- 2.10 The effect of the proposed change would be to allow Members to propose a determination of any application in a manner wholly contrary to the officer recommendation, subject to (a) any proposal being seconded and (b) the Member/s making the proposal indicating possible planning reasons for the proposal at the time that their proposal is made.

2.11 In officers' view, there would be significant advantages to the Planning Committee operating in this amended manner. In the case of an amendment proposing refusal, the Committee would be able to consider the planning reasons advanced in support of the amendment, and adjust and refine (and potentially add to) these reasons in the course of discussion. In this manner, any final decision made contrary to officer recommendation would by definition only follow a comprehensive discussion of all relevant issues. In a situation where Members are proposing a grant of planning permission contrary to officer recommendation, this will allow the Committee to consider in full detail the need for any conditions which could potentially be needed in order to make the development acceptable.

2.12 On this basis, the proposed amendments to paragraph 6 of the Constitution would take the following approach:

- a. The changes would only have effect in relation to Planning Committee and the determination of applications.
- b. Full Council and all other Committees would still be subject to paragraph 6(1) to (6), with the arrangements relating to amendments remaining entirely unchanged
- c. Members of Planning Committee will be able – subject to seconding and the identification of reasons – to propose any of the following (all of which are precluded by paragraph 6 currently)
 - i. Refusal where the officer recommendation is for approval
 - ii. Approval where the officer recommendation is for refusal
 - iii. Deferral in any case
 - iv. The addition of further conditions or the amendment of proposed conditions where there is an officer recommendation for approval (at present, it is necessary for officers, on hearing any points being made by Members, to amend their own recommendation in response if they see fit)
- d. If any amendment is voted down, then the Committee would return to consideration of the officer recommendation as originally advanced (subject to consideration of any further amendments).

3. Finance Comments

None

4. Legal Comments

Contained in main body of report

5. Links to Corporate Aims

Officers' view is that the proposed change will improve the process followed during meetings of the Committee, with resulting benefits for all the Council's corporate aims.

6. Environmental Implications

None

7. Community Safety Implications

None

8. Equalities

No specific impacts

9. Risk Management

Officers' view is that the proposed changes will make the Committee's decisions even more robust and secure from legal challenge or appeal

10. Partnership Implications (if any)

None

11 Recommendations

The matter is due to be reported to the Constitutional Sub Committee on 27 November 2015, and thereafter to Full Council for final approval

Members of this Committee are invited to give their views on the proposal, which views will be included in the report to the Constitutional Sub Committee.

Contact: **Officer Name** **Roy Pinney, Solicitor to the Council**
 Direct Dial No **01823 356409**
 e-mail address **roy.pinney@mendip.gov.uk**