

Taunton Deane Borough Council

Full Council - 15 December 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 the Council's approval of 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 Planning Committee, officers have been considering possible changes to the procedures under which Members of the Committee 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 at least four recent occasions in the last four months, Members have voted against an 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 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 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 This proposal was reported to the meeting of the Planning Committee held on 12 November 2015, and the Committee was fully in agreement with the changes as proposed. At its meeting on 27 November 2015, the Constitutional Sub-Committee also confirmed its agreement to the proposed changes, and issued a recommendation to Full Council that the Constitution should be amended accordingly).

2.12 On this basis, the proposed amendments to paragraph 6 of the Constitution would take the following approach (with the detailed changes to wording as set out in Appendix 1 to this report) :

- 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 Planning 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 Planning Committee's decisions even more robust and secure from legal challenge or appeal

10. Partnership Implications (if any)

None

11 Recommendations

That the Council approves the amendment of Part 4 paragraph 6 of the Constitution as proposed in this report

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APPENDIX 1

PROPOSED CHANGES TO PLANNING COMMITTEE RULES OF PROCEDURE

AMENDMENT TO CONSTITUTION PART 4 PARAGRAPH 6

REF	CURRENT	PROPOSED New text bold and underlined, text to be deleted struck through
Paragraph 6 Amendments	<p>(1) An amendment shall be either</p> <ul style="list-style-type: none"> (a) to leave out words; (b) to leave out words or add others; or (c) to insert or add words <p>but shall not have the effect of introducing a significantly different proposal or of negating the motion</p> <p>(2) Before moving an amendment a Councillor shall ensure that there is likely to be a seconder for that amendment</p> <p>(3) When an amendment has been moved and seconded no further amendments shall be moved until the first amendment has been voted upon</p> <p>(4) If an amendment is carried, it shall be incorporated into the motion which shall become the substantive motion upon which further amendments may be moved. If an amendment is voted down, further amendments may then be moved on the motion</p> <p>(5) With the agreement of any seconder and with the assent</p>	<p>(1) <u>With the exception of an amendment to an officer recommendation that planning permission be either granted or refused as contained in a report to the Council's Planning Committee (which shall be dealt with in accordance with sub paragraph (7) below) an</u> An amendment shall be either:</p> <ul style="list-style-type: none"> (a) to leave out words; (b) to leave out words or add others; or (c) to insert or add words <p>but shall not have the effect of introducing a significantly different proposal or of negating the motion</p> <p>(2) Before moving an amendment a Councillor shall ensure that there is likely to be a seconder for that amendment</p> <p>(3) When an amendment has been moved and seconded no further amendments shall be moved until the first amendment has been voted upon</p> <p>(4) If an amendment is carried, it shall be incorporated into the motion which shall become the substantive motion</p>

	<p>of the Council, given without comment, a councillor proposing a motion or amendment may:-</p> <ul style="list-style-type: none"> (a) Withdraw that proposal; or (b) Alter its wording; or (c) Accept an amendment <p>(6) If there is to be an amendment to the proposed budget then it must be received by the Democratic Services Manager by 12 noon the day before the Council meeting</p> <p>(7) In consideration of application for development under the Town and Country Planning Act 1990 (as amended) where an amendment is suggested in order to make the development more acceptable then the application will be deferred to the next scheduled meeting of the Planning Committee in order to ensure that all implications of the proposed amendment can be considered</p>	<p>upon which further amendments may be moved. If an amendment is voted down, further amendments may then be moved on the motion</p> <p>(5) With the agreement of any seconder and with the assent of the Council, given without comment, a councillor proposing a motion or amendment may:-</p> <ul style="list-style-type: none"> (a) Withdraw that proposal; or (b) Alter its wording; or (c) Accept an amendment <p>(6) If there is to be an amendment to the proposed budget then it must be received by the Democratic Services Manager by 12 noon the day before the Council meeting</p> <p>(7) In consideration of applications <u>for planning permission or other form of consent</u> for development under the Town and Country Planning Act 1990 (as amended) where an amendment is suggested in order to make the development more acceptable then the application will be deferred to the next scheduled meeting of the Planning Committee in order to ensure that all implications of the proposed amendment can be considered</p> <ul style="list-style-type: none"> (a) <u>Sub paragraphs (2) and (5) of this paragraph 6 shall apply</u> (b) <u>Sub paragraph (3) and (4) of this paragraph 6 shall not apply</u> (c) <u>An amendment to the motion (with the term “motion” in this context being the officer recommendation in respect of the application) may have the effect of introducing a significantly different proposal or of negating the motion and maybe:</u> <ul style="list-style-type: none"> (i) <u>That the application be determined as</u>
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		<p><u>proposed in the officer recommendation but with the addition of further conditions and/or the removal or amendment of recommended conditions; or</u></p> <p>(ii) <u>That the application be refused (where the officer recommendation is for approval) or approved (where the officer recommendation is for refusal) PROVIDED THAT any proposer of such an amendment shall when making such a proposal identify the planning reasons for the amendment; or</u></p> <p>(iii) <u>That determination of the application should be deferred PROVIDED THAT any proposer of such an amendment shall when making such a proposal identify the reasons for the proposed deferral</u></p> <p>(d) <u>When an amendment has been proposed and seconded in accordance with sub paragraph (7)(c) it shall at that point become the substantive motion (on which further amendments may be moved in accordance with this sub paragraph (7))</u></p> <p>(e) <u>Where an amendment which has been proposed and seconded in accordance with this sub paragraph (7) is voted down, then at that point (and subject to any further amendment made pursuant to this sub paragraph (7)) the original officer recommendation shall be restored as the substantive motion</u></p>