



**REPORT of  
THE OVERVIEW AND SCRUTINY COMMITTEE WORKING GROUP**

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**to  
OVERVIEW AND SCRUTINY COMMITTEE  
5 MARCH 2024**

**SCRUTINY WORKPLAN ITEM - PLANNING DECISION-MAKING**

**1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to consider concluding two further aspects of this scrutiny workplan item for reference to another Committee or the Council.

**2. RECOMMENDATION**

That the Committee endorses the proposals for a 'constitutional intervention or brake' by way of a deferment, and also for technical briefings/presentations, both as set out in this report for reference to the Council via the Performance, Governance and Audit Committee to enable consideration of the constitutional implications.

**3. SUMMARY OF KEY ISSUES**

- 3.1 The Committee earlier this year made recommendations to the Council on certain aspects of this scrutiny workplan item. The Committee's Working Group has subsequently picked up the two outstanding issues, namely the concept of a 'constitutional intervention/brake' where Members are minded to overturn a Planning Officer's recommendation, and also the proposed introduction of technical briefings / presentations.

**3.2 Constitutional intervention or brake upon overturning the Officer's recommendation**

- 3.2.1 This concept arose from consideration of potential mechanisms for improving decision-making, particularly where Members wish to overturn the Planning Officer's recommendation. The perceived need for this stemmed from the upholding of planning appeals and the award of costs against the Council where the appeal Inspector concluded that the Council's action in refusing the application and defending its position on appeal was wrong and amounted to unreasonable behaviour.

- 3.2.2 Although the overriding objective is to improve the quality of decision-making, the context will continue to be the need to strike a balance between the speed of determination and quality of decisions. Should the overturning of an Officer's professional recommendation be involved, it is important that this can be substantiated having understood the implications.

- 3.2.3 Depending on the approach taken, the position of being 'minded to approve / refuse comes into play, in other words the determining Committee's inclination to take a

particular decision and the reasons for it, alongside a clearly stated reason for actually overturning the Officer's recommendation.

- 3.2.4 There is much advice / guidance on best practice around ensuring that planning committees are advised of the potential risks on appeal and of a costs award. Equally there are several legal cases from which some important messages have emerged:
- the importance of planning authorities not allowing the potential consequences of a decision for their own resources to influence the exercise of planning judgement;
  - while it was appropriate for officers to advise members on the potential cost and reputational implications of refusing permission, this should not be confused with or taken into account as material considerations in the planning analysis or in the exercise of planning judgement. Any such advice should be provided distinct from the planning assessment.
- 3.2.5 Planning Policy Guidance states that the aim of the costs regime is in part to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which will stand up to scrutiny on the planning merits of the case (supported by robust evidence), not to add to development costs through avoidable delay.
- 3.2.6 This Council's own adopted Planning Guidance included in the Constitution reflects much of the key messages set out above, and states that *"Depending on the circumstances and complexity of the case it may be that Officers will need to consider those implications in greater detail and report back. Any proposal for deferment must be disposed of ahead of any conclusion being reached on the decision itself."*
- 3.2.7 Following a deferment at the last meeting of the Committee, the Working Group has looked again at how the proposed 'brake' might work in practice, and the following clarification is offered:
- It will only apply when the Committee is minded to overturn an Officers' recommendation **of approval**
  - The Committee may only reach a point of being 'minded to refuse' rather than approve, based on the potential harm the Committee feels cannot be adequately mitigated by the conditions or s106 agreement etc. It would not be able to decide whether the 'brake' should be invoked. The brake would, under the Constitution, be the automatic outcome of a 'minded to refuse' decision of the Committee.
  - The 'brake' would allow Officers to return to the Committee at the next meeting (or a special meeting should it be necessary) to provide further advice on whether the reasons of harm it considers are relevant and the policies it feels the reasons for refusal should quote can be connected and justified by the Committee as the decision-maker, which could include considering legal advice on those reasons if the Committee felt it was necessary to have it.
  - There may be instances where Officers at the meeting consider the proposed reasons for refusal offered by the Committee at the time are acceptable and that no useful purpose will be served by invoking the 'brake' through a 'minded to refuse' decision.

- There is an element of risk involved with a deferment. This opens up an opportunity for an applicant to lobby Members during the intervening period before the Committee is reconvened. The 'brake' being invoked could also have implications for the timing of the decision and expose the Council to the risk of an appeal against non-determination.
- While there exists within existing Planning Guidance in the Constitution advice around deferring consideration of an application, prior to a decision, for a review, the idea of the 'brake' introduces more certainty into the process given a position being reached by a Committee, unless it is evident that no useful purpose will be served by a deferment.

3.2.8 Of the potential options for providing an intervention or brake the Working Group confirmed its support for deferment which will enable a review to be undertaken and reported back to the original Committee. Provided that the application is presented and considered afresh at the meeting following the deferment there would be no constitutional or probity implications in terms of Member participation and voting. Any change to the Constitution to accommodate this proposal should make it clear that the intervention or brake should only occur once as part of an individual application decision process.

### 3.3 **Officer reports and presentations on planning applications**

3.3.1 The Council receives some very complex applications that can have some very technical challenges for the decision maker to wrestle with when coming to the determination of the planning application. It is accepted that the traditional approach to presenting items at a Planning Committee, supported by a presentation and an Officer's report, at times might not be the best method to assist Members in their ability meaningfully and effectively to engage in the decision-making process.

3.3.2 The Working Group has explored the potential to allow for a 'technical' presentation to Members prior to the Committee meeting that may be able to deal with some of the more pertinent and salient questions on technical matters. This would provide Members with an opportunity to raise and understand some of the technical complexities (as opposed to controversies) of an application, and also the Officer's recommendation, outside of the formality of the Committee meeting. It is envisaged that this could, when used, improve the working of the Committees and in certain cases reduce the potential for deferments and consequent delays. This would however need to be balanced against the need to have an effective and transparent debate at the Committee meeting itself – there being no debate as such at the briefings.

3.3.3 The Working Group while supportive of the general idea accepted that this might need to be backed by an agreed procedure/protocol. It was anxious that the views of the Monitoring Officer should be sought, particularly in terms of probity and whether there were any constitutional implications.

3.3.4 Provided that prior briefings/presentations are not used for imparting information that will not otherwise be repeated or made available at the Committee meeting the Monitoring Officer accepts the good intent of the idea. Clearly if such briefings were used to impart different information to promote a deeper understanding of the application, then it would be essential that Members attended both the briefing and the Committee meeting in order to be able to vote on the matter. The intention of Officers would be that nothing less than is presented to the briefing will be presented to the Committee meeting. Beyond that the Monitoring Officer is satisfied that there are no other constitutional implications.

- 3.3.5 It is therefore proposed that such briefings will not be a regular feature but held only by exception to deal with issues as identified by Officers following publication of the Committee agenda and once the Officer recommendation is known. It is thought that they could be conducted remotely with attendance only by those Members of the relevant decision-making Planning Committee. It is proposed that the workings of such briefings/presentations be covered in the Operating Protocol for the Planning Committees and also in the Council's own Planning Guidance included in the Constitution. A draft set of guidelines has been prepared and is at **APPENDIX A** to this report. Officers should also be asked to ensure that there is consistency of approach to their presentations to the Area Planning Committees.

## **4. CONCLUSION**

- 4.1 It is concluded that the introduction of a 'constitutional brake' in the form of a deferment option as described above should be commended to the Council via reference to the Performance, Governance and Audit Committee to consider and recommend on the necessary constitutional implications.
- 4.2 It is further concluded that that the proposed introduction of technical briefings/presentations be commended to the Council via reference to the Performance, Governance and Audit Committee to consider ensuring that the operation of such briefings is suitably covered in relevant Constitutional documentation.

## **5. IMPACT ON PRIORITIES AS SET OUT IN THE CORPORATE PLAN 2023 - 2027**

### **5.1 Provide good quality services.**

- 5.1.1 Thorough scrutiny processes support improved performance and efficiency which in turn will contribute to the quality of services provided, and functions undertaken by the Council.

## **6. IMPLICATIONS**

- (i) **Impact on Customers** – None directly, but individual scrutiny reviews will enable the impact on customers to be assessed.
- (ii) **Impact on Equalities** – Equalities are considered as part of the reporting on review work undertaken by Officers.
- (iii) **Impact on Risk (including Fraud implications)** – Scrutiny reviews enable potential Corporate Risks to the organisation and their mitigation to be identified.
- (iv) **Impact on Resources (financial)** – Scrutiny reviews offer the potential for an assessment of financial impact to the organisation.
- (v) **Impact on Resources (human)** – Scrutiny reviews offer the potential for an assessment of any resource impact to the organisation.

Background Papers: None.

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