



**REPORT of  
DIRECTOR OF STRATEGY AND RESOURCES**

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**to  
PERFORMANCE, GOVERNANCE AND AUDIT COMMITTEE  
18 JUNE 2024**

**REFERENCE FROM OVERVIEW AND SCRUTINY COMMITTEE - PLANNING DECISION-  
MAKING**

**1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to receive and consider a reference from the Overview and Scrutiny Committee on a proposed change to the Council's Constitution and to recommend accordingly to the Council.

**2. RECOMMENDATION**

To the Council:

- (i) That the proposals for a 'constitutional intervention or brake' by way of a deferment, and also for technical briefings / presentations be endorsed;
- (ii) That subject to (i) above the consequential strengthening of the Planning Guidance in the Constitution and also the Operating Protocols of the Planning Committees as detailed below, be agreed.

**3. SUMMARY OF KEY ISSUES**

- 3.1 This follows an earlier reference from the Overview and Scrutiny Committee on this scrutiny workplan item which then sought a review and refresh of the Planning Appeals Protocol. The latest reference picks 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 The Planning Decision-Making scrutiny workplan item originally derived from a Motion by Councillor A S Fluker which was referred by the Council to the Overview and Scrutiny Committee. An associated reference from the Council in July 2022 on the need for a more objective and evidence-based planning decision-making was added to this item.
- 3.2.2 The concept of the 'intervention or brake' 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.

- 3.2.3 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.
- 3.2.4 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.
- 3.2.5 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.
- 3.2.6 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.
- 3.2.7 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"*.
- 3.2.8 The Committee has looked in detail at how the proposed 'brake' might work in practice, and has endorsed the following:
- 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 Section 106 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.

3.2.9 In the event that an intervention or brake is introduced resulting in a deferment for a review and report back to the determining Committee, provided 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 Committee explored the potential to allow for a 'technical' presentation to Members prior to the relevant Planning 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 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.

- 3.3.4 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 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 together with strengthening of both the Operating Protocols of the Planning Committees and the Planning Guidance in the Constitution.
- 4.2 It is further concluded that that the proposed introduction of technical briefings / presentations be commended to the Council and that the operation of such briefings in line with draft guidelines produced is suitably covered in the Operating Protocols of the Planning Committees.

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

- 5.1 Provide good quality services.
- 5.1.1 Thorough good governance, improved decision-making, performance and efficiency will in turn will contribute to the quality of services provided, and functions undertaken by the Council.

#### **6. IMPLICATIONS**

- (i) **Impact on Customers** – None directly other than the implications of decisions on planning applications and resulting appeals.
- (ii) **Impact on Equalities** – Not applicable.
- (iii) **Impact on Risk (including Fraud implications)** – Good governance in relating to planning decision-making will help minimise the risk of the award of costs against the Council associated with planning appeals being upheld.
- (iv) **Impact on Resources (financial)** – None directly but see (iii) above.
- (v) **Impact on Resources (human)** – Not applicable.

Background Papers: None.

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