

HARBOROUGH DISTRICT COUNCIL  
MEETING OF THE CONSTITUTIONAL REVIEW COMMITTEE

Held in the Council Chamber, The Symington Building, Adam and Eve Street, Market Harborough

12<sup>th</sup> November 2019

commencing at 6.30 p.m.

Present:

Councillor King (Chairman)

Councillors (committee members): Modha,

Rickman and Mrs Simpson

Officers: S. Hamilton, V. Wenham

ELECTION OF CHAIRMAN FOR THE YEAR 2019/20

Cllr King was elected as Chairman of the Committee for the Year 2019/20.

APPOINTMENT OF VICE-CHARIMAN FOR THE YEAR 2019/20

Cllr Rickman was appointed as Vice-Chairman of the Committee for the Year 2019/20.

APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES

Apologies were received from Cllrs James, McHugo and Mrs Robinson (substituted by Mrs Page).

MINUTES

RESOLVED that: the Minutes of the Meeting of the Constitutional Review Committee held on 12 June 2018 be approved and signed by the Chairman as a true record.

DECLARATIONS OF MEMBERS' INTERESTS

There were none.

REVIEW OF THE CONSTITUTION – PLANNING CALL-IN

The Committee considered proposed amendments to the current provisions for the “call-in” of planning applications to Council under Part 3 Section B of the Constitution.

Currently under paragraph B1.4 of Part 3 of Section B of the Constitution, the Planning Committee may make a resolution, but, following call in, its resolution can be revoked (so long as formal notice of planning permission has not been given). The Council then arrives at a new resolution in reliance of Section 101 (4) of the Local Government Act 1972.

The ability for the Council to have the opportunity to reconsider the application after it has been fully debated and determined by the Planning Committee was highlighted as a risk, and it could result in a potential legal challenge.

Even though the planning function has been delegated to the Planning Committee, it does not prevent the full Council from exercising that function. However, it may be more appropriate that the decision to refer the matter to Council is taken prior to the Planning Committee considering the application.

It was suggested that Members consider amending the Constitution to remove the existing “call in” provision and replace it with the following suggestion:-

#### Referral up to Council by Planning Committee

- a) At the beginning of a meeting of the Planning Committee any Member of the Committee may move that a specified planning application which is an item of business for that meeting be referred up to full Council. The Member must identify the grounds of significance justifying the motion. If the motion is seconded, the proposition shall be open to debate.
- b) There shall be no debate on the contents of the report relating to the specified planning application itself. Debate shall be limited to consideration as to whether the item is of such significance as to justify referral up to full Council notwithstanding the delegation of decision-making powers.
- c) If the motion to refer up is carried, the item shall not be determined at the meeting, but shall stand referred to the next ordinary meeting of the full Council. If the referral up is not made in time for the matter to be included on the agenda for the next ordinary meeting, it shall be considered at the first subsequent ordinary meeting of the full Council. However, if the Head of Paid Service considers that it is in the Council's interests to determine the matter before the next scheduled ordinary meeting, the matter may be considered at a special meeting of the full Council.
- d) If the motion to refer up is not carried, the item shall be dealt with in accordance with the Committee's delegated powers.

The above text would replace the sub-paragraph headed “Planning Committee Call-in” in paragraph B.1.4 of Part 3 the Constitution.

To add context to the discussion, the Committee noted that if for example the application being considered was a very significant scheme for the District or the issues were so complicated or the weight of public interest was so large, these reasons would form the justification of the motion in referring the matter to full Council.

Furthermore the Committee noted that the suggestion detailed in the report would remove potential problems with the current “call-in” process. These include whether the current call-in procedure is justified or not, it removes the dilemma as to whether Members who have already taken part in a discussion on a particular application should vote when the matter is considered by the full Council, or whether the Member is conflicted or fettered etc. Thereby any question of a potential legal challenge would be removed.

The issue of avoiding legal challenge on the decision was clarified, as the decision to refer the specified planning application up to full Council would be made before any discussion on the application at the Planning Committee had taken place. This would ensure that there could not be any suggestion of bias or predetermination.

The suggested decision making process would also be fairer and transparent as the application would only be considered once.

The Committee noted that when the application was considered at the Council meeting, the Council would effectively be sitting as a Planning Committee and therefore the rules relating to participating in the decision, speaking and voting would apply.

It was highlighted that it is therefore very important that all Members of Council have undertaken up-to-date Planning training, otherwise the Member will be excluded from participating.

Following concerns from a Committee Member, the existing process for a non-planning Member to propose a motion to the Planning Committee to refer a particular application to Council was clarified. Part 4 (1) Section 11 of the Constitution – Motions on Notice, applies to all Committees of Council. Any Member can submit a motion to the Planning Committee as long as it is proposed and seconded, and submitted in accordance with the Constitution.

This would therefore enable both a Planning Committee or any other Member to submit a motion in relation to a particular Planning application.

The Chief Officer, Governance (VW) advised the Committee that if a motion had been submitted this would be dealt with as the first item on the Planning Committee agenda. If that motion was lost however, and it was not deferred to Council, then the application would be considered by the Planning Committee that evening.

It was noted that at the particular Planning Committee meeting, where a motion had been submitted the existing rules around rules of debate etc as set out in the Constitution would apply.

After considerable discussion and debate, the Committee

AGREED that a flow chart would be included with the Recommendation to Council, detailing the process by which both a Planning Committee member, and a Council member can put forward a Motion to the Planning Committee to defer a particular Planning application to the Council for consideration; and

**RECOMMENDED to Council:**

- (i) that 'Part 3 Section B1.4: Planning Committee Call-in' provision is removed and replaced with the following :-

**Referral up to Council by Planning Committee**

- a) **At the beginning of a meeting of the Planning Committee any Member of the Committee may move that a specified planning application which is an item of business for that meeting be referred up to full Council. The Member must identify the grounds of significance justifying the motion. If the motion is seconded, the proposition shall be open to debate.**
- b) **A non Planning Committee Member may also submit a written Motion on Notice to the Planning Committee requesting that a specified planning application which is an item of business for that meeting be referred up to full Council.**
- c) **There shall be no debate on the contents of the report relating to the specified planning application itself. Debate shall be limited to consideration as to whether the item is of such significance as to justify referral up to full Council notwithstanding the delegation of decision-making powers.**
- d) **If the motion to refer up is carried, the item shall not be determined at the meeting, but shall stand referred to the next ordinary meeting of the full Council. If the referral up is not made in time for the matter to be included on the agenda for the next ordinary meeting, it shall be considered at the first subsequent ordinary meeting of the full Council. However, if the Head of Paid Service considers that it is in the Council's interests to determine the matter before the next scheduled ordinary meeting, the matter may be considered at a special meeting of the full Council.**
- e) **If the motion to refer up is not carried, the item shall be dealt with in accordance with the Committee's delegated powers.**

Voting: in relation to the amendment above: For: 3, Against: 1, Abstained: 1 (Cllr Mrs Page)

## REVIEW OF THE CONSTITUTION – DELEGATION OF PLANNING DECISIONS AND PUBLIC SPEAKING AT PLANNING COMMITTEE

The Committee considered the impact of the September 2018 amendments to the Council's Constitution in respect of the current Scheme of Delegation relating to planning functions and public speaking at Planning Committee.

The main operational changes were the inclusion of a councillor call-in procedure, and increased trigger from 10 to 25 dwellings by which the size of major application decision is delegated to an officer. The changes have coincided with a noticeable reduction in the length of planning committee agendas and meeting duration.

The analysis showed the average number of items at planning committee has dropped from 8 to 6, with the average number of speakers having dropped from 22 to 14 and the maximum number of speakers on any one item at a planning committee has dropped from 10 to 5. The peak has dropped from 46 (or 17 discounting Magna Park) to 8 under the new system.

Based on the analysis the revised Scheme of Delegation and public speaking from September 2018 has made the decision making process less cumbersome and more efficient. There is no evidence that public engagement, quality of decision or customer service has been adversely affected.

The Committee considered the proposal to further amend the existing Scheme of Delegation relating to substitution of house types for proposals of more than 25 units. These applications are currently reported to planning committee but are often non contentious attracting little if any representation for or against. Across large scale development over several years it is common for houses types to be substituted. House type substitutions are commonly relatively superficial in overall planning types, for example altering minor details of external appearance and marginal changes to layout and footprint.

The proposed amendment will allow for consideration of these without taking valuable committee time nor potentially causing unnecessary delay.

The Committee noted that in the past year two applications had been received for proposals of more than 25 units.

### The Committee

NOTED the analysis of information, attached as Appendices A and B to the report, regarding the number of items and speakers at planning committee, before and after the September 2018 changes to the Scheme of Delegation and public speaking and;

CONSIDERED the proposed amendment to the Council's scheme of delegation relating to planning functions as set out in Appendix C to the report (i.e. to delegate substitution of house types); and

AFFIRMED the existing arrangements for public speaking and:

**RECOMMENDED to Council that the proposed amendment to the Scheme of Delegation to Officers, Part 3, Section B, 3.2 of the Constitution, as set out in Appendix A to these minutes, be approved and adopted.**

Voting: In relation to the amendment above. Unanimous

## RECOMMENDATION FROM THE ETHICAL GOVERNANCE COMMITTEE

The Committee considered the Recommendation from the Ethical Governance Meeting of the 29<sup>th</sup> October 2019 which related to proposed changes to the Members' Code of Conduct based on the report on Standards in Public Life Consultation on Local Government Ethical Standards.

With regards to Recommendation 2 of the report, the Chief Officer, Governance (VW) advised that it had been difficult to find definitions of malicious and trivial types of complaints, as by their nature these definitions are subjective, however guidance from the former HDC Standards Board could be included within guidance linked to the revised Code of Conduct.

The Committee discussed the Member's Code of Conduct in relation to Parish and Town Councils, and suggested that Parish and Town Council's should review their own Code of Conduct or in the absence of their own Code, the revised Code for Harborough District Council can be used.

**RECOMMENDED to Council that the revised Members' Code of Conduct as detailed in Appendix A to the report be approved and adopted.**

If approved and adopted by Council, AGREED that the Chief Officer, Governance would notify all Parish and Town Councils that Harborough District Council has adopted the revised Members' Code of Conduct.

Voting: In relation to the Recommendation above. Unanimous

## URGENT MATTERS

There were none.

The Meeting ended at 7.40 p.m.

## APPENDIX A:

### PROPOSED CHANGES TO THE CONSTITUTION PART 3, SECTION B, 3.2 AMENDMENT TO THE SCHEME OF DELEGATION TO OFFICERS

#### Current with recommendation added bold and underlined

3..2 Circumstances by which delegation to Officers is removed:

(a) Any application (other than Advertisement Consents; Prior Notifications and Prior Approvals; Hedgerow Removal Notices; Tree works applications; High Hedge applications; County Matters applications and Screening and Scoping requests) where any Member has requested determination of the application by the Planning Committee, within 28 days of the date of the publication of the weekly list on which that application appears. N.B. The request for consideration may be withdrawn at any time, and the application returned to delegated authority (subject to compliance with the other criteria explained below). Requests should be made to the Development Planning Manager in writing (which includes email) and set out the planning reasons for the request.

(d) Applications for 25 or more dwellings **(other than substitution of house types)** and for commercial floor space of 10,000m/sq. or more.