

Council 16 December 2019

Item 8a refers

Recommendation (1) from the Constitutional Review meeting of 12th November 2019

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

RECOMMEND TO COUNCIL 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.

The report to the Constitutional Review meeting on 12th November 2019 and requested flow chart are attached.