

South Cambridgeshire Hall
Cambourne Business Park
Cambourne
Cambridge
CB23 6EA

t: 03450 450 500

f: 01954 713149

www.scambs.gov.uk



11 February 2020

To: Chairman – Councillor John Batchelor
Vice-Chairman – Councillor Pippa Heylings
All Members of the Planning Committee - Councillors Anna Bradnam,
Dr. Martin Cahn, Sue Ellington, Peter Fane, Brian Milnes, Judith Rippeth,
Deborah Roberts, Heather Williams and Nick Wright

Quorum: 3

Substitutes: Councillors Grenville Chamberlain, Mark Howell, Dr. Shrobona Bhattacharya,
Graham Cone, Henry Batchelor, Dr. Claire Daunton, Eileen Wilson,
Dr. Tumi Hawkins and Dr. Douglas de Lacey

Dear Councillor

This is a further supplement to the agenda for **PLANNING COMMITTEE**, which will be held in the **COUNCIL CHAMBER, FIRST FLOOR** at South Cambridgeshire Hall on **WEDNESDAY, 12 FEBRUARY 2020** at **10.30 a.m.**

Members are respectfully reminded that when substituting on committees, subcommittees, and outside or joint bodies, Democratic Services must be advised of the substitution *in advance of* the meeting. It is not possible to accept a substitute once the meeting has started. Council Standing Order 4.3 refers.

Yours faithfully
Liz Watts
Chief Executive

The Council is committed to improving, for all members of the community, access to its agendas and minutes. We try to take all circumstances into account but, if you have any specific needs, please let us know, and we will do what we can to help you.

AGENDA SUPPLEMENT 2

5. Planning Scheme of Delegation

PAGES
1 - 8

This page is left blank intentionally.

Agenda Item 5

Planning Scheme of Delegation

Following the publication of the Planning Committee agenda, the Council has been made aware of a further challenge to the legality of the changes proposed to the recommendation in option 2 which, as currently drafted states:

*A Local Member or Parish Council writes, or emails a request for a particular application to be considered by Planning Committee, sound planning reasons are given for why this is considered necessary and the request is accepted by the Joint Director of Planning and Economic Development, in consultation with the Chairman of Planning Committee (or Vice-Chair in his/her absence). **In the event that the view of the Chair of Planning Committee (or Vice-Chair in his/her absence) does not accord with the view of the Joint Director of Planning and Economic Development, the application will be determined by Planning Committee.***

Whilst it is appropriate for decisions to be delegated to an officer in consultation with a member, the delegated decision must ultimately remain that of the officer for it to be lawful. It is believed the challenge centres on the fact that there might be perceived to be an “automatic” referral of the matter to Committee in the event of the Chair of Planning and Planning Officer disagreeing on the route for decision. Arguably this amounts to the Chair of Planning being given a decision making capability that is inconsistent with the provisions of the Local Government Act (as the Chair of Planning is a non-executive Councillor) in circumstances where the officer considers the application should be determined by officers.

Whilst, on past performance, this likelihood is considered more theoretical than real, Officers accept it is important to have a lawful scheme of delegation and have therefore considered the matter further and offer the following options.

1. The delegation provisions above are amended to read as follows:

“A Local Member or Parish Council writes, or emails a request for a particular application to be considered by Planning Committee, and sound planning reasons are given for why this is considered necessary and the request is accepted by the Joint Director of Planning and Economic Development, in consultation with the Chairman of Planning Committee (or Vice-Chair in his/her absence).”

Footnote - Notwithstanding any decision is ultimately one for the officer himself/herself, the committee’s guidance in terms of decisions made in accordance with the delegation rules is that in cases which raise issues which are sensitive or controversial, the committee would expect the officer normally to refer the matter to the committee.

2. The receipt of a request for call in by the Parish Council or a member within 21 days of notification citing relevant material planning considerations why the application should be considered by Planning Committee (with any judgement on the determination of whether the call in identifies “relevant material planning considerations” being delegated to the Director of Planning) results in the application being referred to the planning committee for determination.

3. The Council establish a sub-committee (3 members) to consider all requests received for the call in of an application by Members or Parish Councils.
4. The receipt of a request for call in by a Parish Council or a member is referred automatically to the Planning Committee – with no requirement for a “cut off” time or assessment of the material planning considerations cited by the Parish or Member for seeking such a decision.
5. The receipt of a request for call in by a Parish Council or a member within 21 days of notification is referred automatically to the Planning Committee – with no requirement for the assessment of the material planning considerations cited by the Parish or Member for seeking such a decision.
6. Do nothing.

Considerations.

In the last 12 months the Council has received some 70 call in requests from Members/Parish Councils. Officer review of such requests was introduced to provide a means by which those requests could be reviewed in consultation with the Chair/vice chair of the Committee to provide for the sensible management of Committee agenda’s given government targets for application handling and the objective of making effective use of the Committee’s time.

Option 1 arises as a result of further concerns, and legal advice and reflects arrangements in a number of other authorities. The attached appendix to the Planning Committee report provides for a period of 21/28 days for such requests to be submitted from the Parish or local member respectively. It has three potential benefits over an automatic referral; firstly it provides for circumstances where officers professional view would be in line with the Parish or Member view (to support or oppose the development). Secondly, it provides a means by which the Local Planning Authority can manage requests from individual Cllrs or Parishes that might otherwise overwhelm the Committee agenda – with 45 Councillors and 106 Parishes there is a risk that Committee time may become devoted to one area/parish over another. Third, in the event of an automatic referral, Members and Parishes may find themselves lobbied robustly by applicants or objectors in order to exercise their “call in” provisions solely in order to remove a potentially unfavourable decision from officers - for example where pre-application advice has been negative.

Option 2 would provide for an automatic referral of an item to committee provided that material planning considerations were made by the Parish/Member within 21 days of notification. This reflects the arrangements in Cambridge City Council’s scheme of delegation as regards members only as they do not have any Parishes. The provisions seek to avoid vexatious or inappropriate reasons being cited (or no reasons at all) for the call in request and is important to help the Committee’s understanding of the matter when they are considering it (and for the officers report to explore this matter). The citing of a reason for the call in would also enable the LPA to seek an “extension of time” with the applicant on the basis of a clear understanding of the local concern (and potentially avoid a “non-determination” or arguments of unreasonable behaviour by the LPA on appeal). Officers would include this “reason” within the Committee report. Given the definition of

material planning consideration is complex, it is considered that such a judgement should be made by the Chief Planner or their nominated officers. The “qualification” of 21 days is to avoid a situation where very late in an applications processing, requests are received that cause additional delay to the processing of applications – and enable the efficient forward planning of committee agendas.

Option 3 would seek to establish a “sub-committee” of the Planning Committee of 3 members although the precise number would be a matter for members to determine. The meeting would consider all requests for call in - and the reasons cited. As a meeting of the Council, the meeting would be in public, with a requirement for agenda publication, reports and minutes of decisions. In SCDC, the meeting would also be open for public speaking, questions and petitions. This approach would be expensive to deliver – requiring planning officer, planning administration and democratic services time to support - and introduces a further democratic process with scope for confusion as to the purpose of the sub-committee meeting and the planning committee. For those applicants employing a planning consultant/architect (which make up the majority of current cases called in) the process would give rise to potential additional costs and anxiety. For this reason, officers do not support this option.

Option 4 would see all applications automatically referred to Committee, even where there was no reason, or material planning consideration cited by the Member of Parish Council for their request and no time limit. Avoiding the need for any explanation or judgement by officers for the reasons, the automatic referral of an application would mean that applicants would not necessarily know the material planning considerations that had been cited to justify why their application had been referred/called in. This would not be consistent with the objective for transparency around decision making – and may lead to claims that the Council had acted unreasonably in the event of an appeal. Automatic referral would nevertheless avoid the need for any judgement to be exercised by officers on the basis for referral.

Option 5 would propose the same “automatic referral” as option 4 above but would introduce a time limit to the automatic referral request – to assist with the early identification of applications requiring a Committee decision and use of the call in process at any time up until a decision which would have the effect of potentially delaying decisions and reducing certainty about the route for decision making.

Option 6, given the purpose behind the recommendations from officers and the advisory group, this option is not supported.

For the reasons set out above, officers would recommend that option 1 be pursued.

Recommendations

It is recommended that Planning Committee:

(a) Agree the changes to the Planning Scheme of Delegation as detailed in Option 1 above namely to amend paragraph 1 in Appendix A to read as follows;

1. “A Local Member or Parish Council writes, or emails a request for a particular application to be considered by Planning Committee, and sound planning reasons are given for why this is considered necessary and the request is accepted by the Joint Director of Planning and Economic Development, in consultation with the Chairman of Planning Committee (or Vice-Chair in his/her absence).”

Footnote - Notwithstanding any decision is ultimately one for the officer himself/herself, the committee's guidance in terms of decisions made in accordance with the delegation rules is that in cases which raise issues which are sensitive or controversial, the committee would expect the officer normally to refer the matter to the committee.

(b) Agree the remainder of the changes in Appendix A.

(c) Decide whether to request officers to undertake a further review of the Parish and Member "call-in" process.

FOXTON PARISH COUNCIL

Foxton Parish Council, Foxton Village Hall, Hardman Road, Foxton, CB22 6RN
Tel: 01763 838 430 Email: clerk@foxtonparishcouncil.gov.uk

Cllr. Bridget Smith
Leader of South Cambridgeshire District Council
Cambourne Business Park
Cambourne
Cambridgeshire
CB23 6AE

15 January 2020

and by email: cllr.bridgetsmith@scambs.gov.uk

Dear Cllr. Smith

Thank you for your communication regarding planning applications referred to the SCDC Planning Committee following requests from parish councils.

Foxton Parish Council would like to raise some points from this communication as the parish councillors are not satisfied with the reasons given for the changes to the procedure of referrals and we would like to formally request that this matter is considered afresh in an open full SCDC council debate, especially as you are proposing a change to the SCDC constitution.

Previously, parish councils could request that planning applications are referred to the Planning Committee if the parish council recommended refusal of the application depending on the particular circumstances of the case. Of course, this being with the proviso that only valid planning reasons are given for such a referral otherwise planning applications are quite correctly decided under officers' delegated powers.

We find it astonishing, therefore that the decision to put applications before the Planning Committee or not, is currently taken by the Chair and Vice Chair of the Planning Committee and the planning manager. Of course, the trained and professional planning officer should have a major input into these decisions, but why is part of the decision-making process given to elected councillors who may or may not have in depth knowledge of all aspects of planning law and procedures?

Surely it would be preferable for just the SCDC employed and professional planning officers to make the decision on planning grounds, as to whether the Planning Committee considered applications or not. This would then ensure that the Planning Committee deal with each application with the correct level of democratic openness and probity such matters require. This would also give reassurance to parish councils, and indeed anyone else

who makes an appeal, that both officers and elected councillors are carrying out their duties in an open and transparent manner.

We await your response on this matter.

Yours sincerely

A solid black rectangular box redacting the signature of Annabel Wright.

Annabel Wright

Parish Clerk

On behalf of Foxton Parish Council

Cc: Ms Liz Watts, SCDC Chief Executive

Cllr Dr Claire Daunton, SCDC Vice Chair of Civic Affairs Committee

From Ickleton Parish Council

Dear Councillor (and Leader) Bridget Smith

I am replying on behalf of Ickleton Parish Council to your letter of 5th February giving an update on items referred to Planning Committee. I regret that I cannot attend tomorrow's Planning Committee Meeting. I would ask that this email is forwarded to all Members of that Committee, please.

I note what you have said. I thought it might be helpful to all involved if I comment from Ickleton Parish Council's perspective. We understand that a legal challenge to South Cambridgeshire District Council (SCDC) is in the pipeline from others, but do not wish to say anything about that. We are concerned with the way the delegation system with regard to planning proposals has been operating since the automatic referral of Parish Council objections (where Officers were in support) to Planning Committee was ended.

If the present delegation system had operated to date in a way that Parish Councils had experienced to be transparent, fair, and reasonable, there would not be a problem. However, this has not been the case.

In September 2017 I asked prior to the Planning Planning Forum what % of Parish Objections were referred to Committee. The answer was 6%. The issue was supposedly under review. One year on, and the referrals were 5% of Parish objections. The review had not, and still has not, taken place. It was clear that, regardless of how strongly Parishes objected to a proposal, or of how many sound planning reasons were put forward by them, there was only one chance in 20 of their concerns going to Committee.

It's all very well for one single elected Member (Planning Committee Chair) to be involved in the delegation process, but he or she will not have visited the site, may have little knowledge of the community, and is faced with the views of the Case Officer and those of a Senior Planning Officer (neither of whom are likely to have close knowledge of the settlement). No wonder 95% of Parish objections are

brushed aside. At every opportunity we are told by SCDC how important our views are, but we are seeing in practice that our views only matter if we happen to support the Officers.

In addition we have found the letters explaining why our objection has not been referred to Committee add nothing to the Delegation Report and are little more than a rehashing of that document. On occasion the explanations have been perfunctory, and sometimes factually incorrect.

We appreciate that Planning Committee needs to focus on the larger applications, but a glance at their Agendas will show that the small application has been virtually excluded. Householder applications at Committee are an almost extinct species.

In short, Parish Councils feel the current arrangements for delegation take away much of the influence we used to have and give rise to a democratic deficit that is keenly felt, particularly in the smaller communities. We are fed up with reviews that are promised and which never materialise. Reform, involving a good measure of rebalancing, is needed – and quickly, please.

Best Regards

Terry Sadler

Parish Councillor (and former Chairman)