



22 June 2017

REPORT TO: Civic Affairs Committee
LEAD OFFICER: Joint Director for Planning and Economic Development

Proposed Planning Committee Adjourned Decision Protocol

Purpose

1. To consider introducing a new Protocol that would be followed if the Planning Committee is minded to approve or refuse a major or significant planning application contrary to the advice of officers.
2. This is not a key decision but it is brought before the Committee as it will require an amendment to the Council's Constitution.

Recommendations

3. That the Civic Affairs Committee recommends to Council that it amends the Constitution to allow the introduction of an Adjourned Decision Protocol.

Background

4. The Council receives a significant number of challenging major and or significant planning applications associated with the economic and housing growth taking place in the Greater Cambridge area. The Planning Committee has a significant pipeline of projects relating to growth proposals that are expected to continue to excite local concerns and require very careful consideration given the complex policy issues involved – including the Council's position in respect to the NPPF and the need to maintain a 5 year housing land supply.
5. Planning Committee decisions are being tested at appeal and have been the subject of scrutiny by inspectors and the courts. Applicants are also seeking to challenge the decisions of the Planning Committee that are contrary to officer's recommendations as "unreasonable" - and have successfully secured awards of costs alongside the subsequent approval by the inspector of the proposal. It is accordingly in the interests of the Committee, the Council and the communities that we serve, that where a proposal is refused by the Committee, very great care is given to the reasons for such a refusal. In some recent cases, the Council has been unable to find professional independent planning consultants prepared to defend committee reasons for refusal.
6. The consequences arising from this are significant and include the erosion of confidence amongst communities and developers in the planning process, potential significant cost and delay in the realisation of new proposals that contribute towards reducing the housing supply deficit in the District. In addition, the lack of a clear and careful process for considering finely balanced judgements, is eroding confidence in the Committee and Council within the development community. Given the level of risk associated with the often-considerable investment made by the development industry in planning applications this can mean that instead of detailed planning applications, developers make only outline submissions, or that rather than follow the tailored

advice of Council officers geared towards meeting local needs, their professional advisors seek instead to submit schemes that they feel they can justify at appeal.

7. Whilst recognising that Planning Committee's face considerable challenges against the current backdrop of national planning policy drivers and local concerns with new development, it is considered appropriate to review current committee procedures to recognise these pressures, and to reflect best practice elsewhere across the Country in Councils facing similar challenges. Whilst not seeking to prevent the planning committee from making a decision contrary to the advice of officers, this paper therefore proposes the introduction of a process to allow for the provision of written advice to the Committee in such circumstances, through the automatic deferral of the item where the officer's recommendation is not supported in the first instance.

Considerations

8. The Protocol is proposed to enhance the robustness of decision making and to reduce risks to the Council. It is in accordance with best administrative practice and the advice of the Planning Advisory Service and Local Government Association who recommend the use of such a mechanism. Several other Councils have similar mechanisms to that proposed in place.
9. The deferral process allows, in cases where the Committee is minded to make a decision contrary to officers' advice, for 'a minded to resolution' to be recorded. The application would be brought back to a subsequent Planning Committee for a decision to be made. The deferral therefore enables further consideration of the proposed reasons for the decision to take place and, where appropriate, additional legal and/or technical advice to be obtained and presented before the decision is confirmed by the Committee. Advice on the implications of the 'mind to' resolution such as the proposed reasons for refusal, their defendability and potential risk of costs could also be considered further prior to a decision being made.
10. It is proposed that the Protocol would only apply to:
 - Major applications (as defined by the national recognised classification for such applications) that are being considered by the Planning Committee;
 - Where the majority resolution of the Planning Committee is that it is minded to decide contrary to officer recommendation;
 - The procedure is initiated by the Chair/Vice Chair of the Planning Committee in consultation with Head of Development Management/Head of New Communities. This will operate after a planning application has been presented by officers, public speaking has taken place and members of the Planning Committee have debated the merits of the proposal. The Chair of the Planning Committee (or Vice Chair when acting as Chair) will usually then seek a resolution and the specific grounds upon which Members of the Committee agree by a majority that they are either minded to refuse planning permission or minded to approve planning permission.
11. Where the procedure is initiated Officers will prepare a further report providing advice on the Committee resolution which would normally be brought back to the next available Planning Committee unless additional legal or technical advice is sought.
12. The original Officer's report and any new advice will be represented to the Committee and any interested parties contacted and given a second opportunity to address the Committee. This ensure issues of probity and fairness in case the composition of the Planning Committees differs.
13. The Planning Committee is then free to determine the application by either confirming the 'minded to resolution'; amending it – either the reasons for refusal, conditions or

S106 requirements; or agreeing the original Officers recommendation. The final decision will be confirmed and the decision and reasons for it recorded in the Minutes of the meeting.

14. The introduction of a Decision Deferral Protocol would have a number advantages and disadvantages which are set out below.
15. Advantages
 - It would allow further consideration of the minded to resolution to ensure all relevant information can be carefully considered, additional advice to be sought where appropriate and any associated risks to be available to the planning Committee prior to the decision being made;
 - Enhances the robustness of the decision by enabling thorough consideration of conditions, reasons for refusal and S106 and the evidence associated with each outside the committee meeting;
 - Reduces the risk of adverse planning appeal decisions and associated costs arising out of claims of unreasonable behaviour;
 - Reduces potential delays in delivery of development that would be allowed on appeal thereby contributing to housing delivery and assists in the future maintenance of a five-year housing land supply;
 - Enhances confidence in and reduces the reputational risk for the council which may deter development and investment into the District that contributes to the delivery of council priorities; and
 - Encourages developers to invest more in planning applications that respond to local advice and circumstances by improving confidence in the decision-making process.
16. Disadvantages
 - Could give the appearance that the discretion of Planning Committee Members is being fettered, constrained or unduly influenced by Officers;
 - May lead to delays in the Council determining major or significant planning applications that undermines the Council's ability to meet national planning application performance targets; and
 - May increases the possibility of appeals being lodged against the non-determination of planning applications in some cases.

Options

17. Do not introduce the Protocol – the existing arrangements would be unchanged. This would not serve to improve confidence in the planning process and existing risks to the Council would remain.
18. Introduce the Protocol – for the reasons above, and in line with advice from the Planning Advisory Service, this would bring SCDC in line with best practice and would enhance the robustness of the final Committee decision by ensuring that all relevant matters have been considered, that there is evidence to justify the final decision and that risks are understood and where possible minimised. It would help enable development that would otherwise be delayed by the appeal process. Whilst there would be some additional work and cost generated by deferring a decision and taking the application back to a subsequent Committee this is considered to be substantially less than that required to defend a decision at appeal and the risks of costs being awarded against the Council

Implications

19. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered:

Financial

20. The risk of additional and unplanned financial costs would be likely to be reduced due are reduction in the number of appeals lodged where to the Council is perceived to have or is proven to have acted unreasonably and costs awarded against it.

Legal

21. There are no significant implications.

Staffing

22. There are no significant implications.

Risk Management

23. There are no significant implications.

Equality and Diversity

24. There are no significant implications.

Climate Change

25. There are no significant implications.

Consultation responses

26. None

Effect on Strategic Aims

27. The Protocol will help the Council to provide robust and timely decisions that will contribute to the delivery of development that support the well-being of our communities, secures the delivery of a wide range of housing to meet existing and future needs of the community and supports the economic growth of the area. The Protocol would thereby contribute to the following corporate objective: Living Well, Homes for our Future and Connected Communities.

Background Papers

PAS/LGA presentation 'Making Defensive Planning Decisions'

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