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Consortium
Ltd

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South Cambridgeshire District Council
FAO Civic Affairs Committee
South Cambridgeshire Hall
Cambourne Business Park
Cambridge CB23 6EA

Dear Councillors

Civic Affairs Committee: Report from the Constitution Task and Finish Group

About Us

The Fews Lane Consortium is a community action group based in Longstanton that seeks to encourage sustainable development in our district's villages and to promote democratic accountability in local government. Over the past year, the Consortium has been engaging with community groups and parish councils across the district to advocate on these issues of importance to our local communities.

Summary

As the Council's chief governing document, the Constitution is of the utmost importance in creating governmental structures that are responsive to local needs and accountable to local residents.

The Consortium's chief concern about this revision is that the proposed change to the delegation arrangements for planning decisions removes all mechanisms of democratic accountability from the decision-making process for delegated applications.

The Council established the current scheme of delegation in 2016 only after undertaking a two-month public consultation involving parish councils and local residents. Even if the committee decides not to undertake a public consultation in regards to this revision of the scheme of delegation, it seems premature to recommend this draft for adoption by the full Council after members have only had 5 clear days to consider the proposal.

The Consortium feels strongly that the proper forum for the consideration of the type of detailed and nuanced decisions required in this revision of the Constitution is at the committee stage, and the Consortium therefore would ask the committee to consider deferring a decision on the report and its recommendations until the committee's next meeting. This would allow the anticipated necessary changes subsequent to the upcoming senior management restructuring to be incorporated into the document and reviewed by the committee prior to a final draft Constitution being recommended to the full Council. Deferring the decision to the committee's next meeting would allow members to seek feedback from local residents and parish councils before deciding how to proceed.

The Consortium also recommends that the Constitution not prescribe in the Constitution that the Head of Legal Practice will also serve as the Monitoring Officer and recommends that the Anti-Fraud, -Theft, and -Corruption Policy remain as part of the Constitution.

Delegation of Planning Decisions

Background

Part 3, Table 5
Appendix A - 3.2(n)
Appendix B - p. 55
Appendix E - p. 120

At present, when a local member or parish council feels that a planning application should be determined by the planning committee, a request may be submitted to the Chair of the Planning Committee, who then decides whether the application will in fact be determined by the Planning Committee or referred to an officer to be decided under delegated powers.

The proposed change to the constitution would transfer this power from the Chair of the Planning Committee to the Joint Director for Planning and Economic Development.

Issue No. 1 – Democratic accountability

In the vast majority of local authorities in England, local members and parish councils can request that controversial planning applications are determined by the planning committee. This ensures that controversial planning applications are determined by a democratically accountable decision-maker.

The scheme presently used in Cambridge City and now proposed for use in South Cambridgeshire is highly unusual in that a single officer is given authority to determine which applications are considered by the planning committee.

In ordinary circumstances, these arrangements would be problematic because officers are not directly accountable to local residents through the democratic process. In the case of delegating this power specifically to the Joint Director for Planning and Economic Development, there is a total lack of accountability as there is no indication in the Constitution that this Council has any power whatsoever to remove the Joint Director for Planning and Economic Development from office.

Any other service director or chief officer could, under the proposed Constitution, be removed from office by the Employment and Staffing Committee or by the full Council, respectively. However, there is no provision in the Constitution that relates to joint service directors. Presumably since the position of Joint Director for Planning and Economic Development is a joint position, any removal from office would require the Cambridge City Council to also take the same action. Otherwise, the only option available to this Council would be to withdraw from the shared service arrangement, and with all the costs, turmoil, and disruption that such a move would entail, no one is likely to support that option.

Issue No. 2 – Public consultation

The current delegation policy for planning applications was decided upon in 2016 after a two-month long public consultation that involved soliciting feedback from parish councils and local residents. It does not seem advisable to now scrap the policy arrived at after that consultation and replace it with a proposal that has only been made available to the public buried in a 900-page committee agenda that has only been available for 5 clear days.

The Consortium is concerned that it will be very difficult to amend the proposed Constitution once it is reported to Council and feels strongly that the appropriate forum to consider amending the proposed Constitution is at the committee stage.

Even if no public consultation is to be undertaken, the Consortium urges the Civic Affairs Committee to consider this proposal at its next meeting before submitting the document to the full Council. This would allow members of the committee to thoughtfully consider this proposed change, consider

alternative proposals, and allow time to obtain feedback from their communities and parish councils on these changes.

An alternate proposal, adapted from the delegation scheme of the Milton Keynes Council, is included as an annexe to this document for the consideration of the committee.

Designation of Head of Legal Practice as Monitoring Officer

Article 12.1(c)
Appendix B - p. 22
Appendix E - p. 55

At present, the Council's Head of Legal Practice also serves as Monitoring Officer. While the Consortium does not suggest that this arrangement needs to be changed in the immediate future, we would point out to the Council that this arrangement does potentially pose a risk of creating significant conflicts of interest.

One of the statutory functions of the Monitoring Officer is to report to the Council on any proposal, decision, or omission that is likely to give rise or has given rise to a contravention of law or to maladministration.

When such circumstances do arise, the Council may find itself in the position of being a defendant in legal proceedings. The Head of Legal Practice, in those circumstances, would be responsible for defending the Council in any such proceedings. The Monitoring Officer would be responsible for making an impartial report to the Council on any illegalities or maladministration that had occurred. This situation has arisen in the past and could arise again in the future, and in such circumstances, an officer can not be expected to simultaneously perform those contradictory roles.

The Committee on Standards in Public Life has recently addressed this issue in pages 81-83 of its report on Local Government Ethical Standards published in January of this year.

Removal of Anti-Theft, -Fraud, and -Corruption Policy from Constitution

Appendix A - 3.2(l)
Appendix E - p. 399

As was noted in a public question asked at last Thursday's Council meeting, the Consortium feels strongly that this vital policy and the Whistleblowing Policy should be included in Part 5 of the Constitution.

The Consortium recognises that it is important that the Constitution not become an overly lengthy document, but on balance, we feel that the importance of these policies indicates they should be included in Part 5.

Delegation to Chief Executive to further revise draft Constitution before being reported to Council

Appendix A - 3.2(o)
Report of the
Constitution Review
Task and Finish Group
Recommendations
3(b)(i) and 3(b)(ii)

While the Consortium has every confidence that the Chief Executive could draft a very high quality Constitution, we are nevertheless concerned that the task of writing the Council's Constitution should not be delegated to officers.

As the authority's chief governing document, it is crucially important that the Constitution is seen to be the work of the district's democratically elected councillors. Delegating the task of further revisions to officers will give rise to the impression that the document has been drafted by and for the bureaucracy, not drafted by councillors on behalf of the residents of the district.

Thanks

In preparing these brief representations, the Consortium has noted the tremendous amount of work already accomplished by the task and finish group that has gone into preparing this revision of the Constitution, and the Consortium would like to thank Cllr Daunton, Cllr Van de Weyer, and Cllr Howell for their hard work and diligence in drafting this new Constitution.

Yours faithfully

Daniel Fulton
Director

Responsibility for Council Functions (Table 5)

Delegation of Powers and Functions in relation to Planning Applications

South Cambridgeshire District Council operates a scheme of delegation which sets out the range of decisions that officers may make on behalf of the Council. Decisions on the majority of planning proposals and associated applications are delegated to officers without the need for them to be decided by members at Planning Committee.

Delegated decisions are carefully considered by the case officer, who outlines their recommendations and reasons behind the recommendations in a balanced report, which is checked by a designated officer before a decision is agreed and issued.

By operating a scheme of delegation, decisions are made in good time, in line with statutory target dates, and the Planning Committee can concentrate on the most contentious and significant proposals.

All planning applications shall be determined by an officer under delegated powers subject to the limitations stated in Part A below.

Part A

Limitation on Delegated Authority

1. No delegated decision shall be made by an officer where the development, in the opinion of the officer, is likely to be of a controversial nature, taking into account such factors as the scale and nature of the proposed development, the history and sensitivity of the site and the likely level of public interest.
2. No delegated decision shall be made by an officer where, in the opinion of the officer, a decision on the application should be made by the Planning Committee because of special planning policy considerations, the complexity of the application or the application's significance and / or strategic importance to an area beyond the specific site.
3. No delegated decision shall be made by an officer which is materially in conflict with any of the Council's approved planning policies.
4. No delegated decision shall be made by an officer until the formal consultation period has expired.
5. No delegated decision shall be made by an officer if a written request or e-mail is received within 28 days of the date of notification, or in the case of any subsequent significant amendment to a current proposal within 14 days of the date of notification of the amendment, giving notice of an objection from:
 - a. A local member in respect of an application within their ward.

- b. A local member where an application in an adjacent ward will have an impact on their ward.
- c. A parish council in respect of an application within their parish.
- d. A parish council in respect of an application in an adjacent parish will have an impact on their parish.
- e. In the case of all planning applications except major applications, 5 or more members of the public from different households.
- f. In the case of a major application, 20 or more members of the public from different households.

In all cases an objection must form a material planning consideration and an explicit request must be made that the application be referred to the Planning Committee for determination.

Where a request to refer an application to the Planning Committee has been received from a parish council, an undertaking must be given that a member of the parish council or the parish clerk will attend the Planning Committee meeting.

Failure to attend a Planning Committee meeting following an undertaking to do so on two occasions within any 12-month period will result in the parish council being barred from requesting an application be referred to the Planning Committee for a 3 month period from the date of the second incidence.

A party having requested that an application be referred to the Planning Committee on an objection based on the procedures outlined above may withdraw the request for a referral to the Planning Committee if the proposal is amended to their satisfaction or conditions agreed to address the issue as long as notice of the withdrawal is received prior to the publication of the agenda for the relevant meeting.

- 7. No delegated decision shall be made by an officer where the application relates to land owned by an elected member or officer of the Council.
- 8. No delegated decision shall be made by an officer where the application is made by or on behalf of an elected member or an officer of the Council, or a close friend, relative or partner of either of such persons.
- 9. No delegated decision shall be made by an officer where a planning application for any 'Major' or 'Minor' development that relates to the Council's own land and one or more representations have been received against the proposal.
- 10. No delegated decision shall be made by an officer where, in the opinion of officers, the application should be determined by the Planning Committee because of special planning policy considerations, the complexity of the application or the application's significance and / or strategic importance to an area beyond the specific site.