

CORPORATE PERFORMANCE PANEL REPORT

Ward Affected:-	Type of Report:- Call-in
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OPEN	Portfolio:- Development

Committee: Corporate Performance Panel
Date: 18 December 2017
Subject: Call-in of Cabinet Decision

Summary

This report deals with the decision made by Cabinet, at its Meeting held on 28 November 2017, concerning Cabinet's recommendation to Council to approve the Planning Scheme of Delegation.

The decision has been called-in by Councillor J Moriarty with five supporters, and the Chief Executive, has determined that section 12.4 (b) of the call-in is valid.

The report outlines to Members how the call-in process may be used in this case and what the issues are relating to the matter.

1 Introduction

- 1.1 A decision was taken by Cabinet at meeting on 28 November 2017 concerning the approval of the Planning Scheme of Delegation. A copy of the report to Cabinet is attached.
- 1.2 The decision made in respect of this matter is as follows:

"RECOMMENDED: 1) That applications due to go to Planning Committee (except those subject to the Member call-in right) be considered first by a Sifting Panel. The Sifting Panel may resolve that an application that would need to go to Planning Committee under 1.1.2 – 1.1.4 of the current Scheme of Delegation (attached to the report) can be determined under officer delegated powers.

2) That the current Member call-in right and the current timescale for it be retained but amended to ensure that Members only call-in applications within their own Wards (unless exceptional reasons dictate otherwise), and that reasons for calling-in the application are given.

3) That the operation of the Sifting Panel and the detail of “exceptional Circumstances” set out in the report be reviewed after 12 months of its commencement and the relevant Scrutiny Panel be invited to carry out the review.

Reason for Decision

To allow a more proportionate use of the Planning Committee, both in terms of Members and officers time and resources.”

2 Grounds for Call-In

2.1 Standing Order 12.3 (d) requires grounds to be given for calling-in an executive decision, and in his call in Councillor J Moriarty has given the following reasons. It should be noted that the call in was allowed under 12.4b set out in bold below:

“I would like the decision of the Cabinet of Tuesday 28th November 2017 “Planning Scheme of Delegation” to be called in for scrutiny by the Corporate Performance Panel, but am aware for you to even consider this request it must receive the support of at least three other councillors.

Part 2 of our Constitution states its purpose under seven headings. I believe that the current proposal, which has yet to be scrutinised, frustrates five of those aims. Scrutiny and possible amendment or clarification could ensure that such anomalies are removed. Namely,

b) to encourage the active involvement of local people in the processes of local government decision-making

This proposal removes a level involvement without consultation; and without explanation, consultation and clarification will harm the reputation of our tier of local government.

c) to help local councillors represent local people more effectively.

This proposal will have the opposite effect as councillors will not know whether a Parish Council’s view will be taken into account by the Planning Committee and might therefore have to ‘call-in’ every application which would be less efficient, more time consuming and expensive than the current arrangements.

d) to create effective means for decision-makers to be held to account publicly.

The majority of the trial steering committee meetings have been held

in secret. The one to which members of the planning committee were invited has no minutes or notes (I have asked to see them) and the cabinet decision gives no indication as to the manner in which the sifting meetings will be held. Reference in the Cabinet meeting was made to 'meetings behind closed doors.' !

Will SO 34 apply, will declarations of interest ned to be made, will minutes or notes be kept, may recordings be made - we have no idea.

f) to ensure those responsible for making decisions are clearly identifiable by local people and will explain the reasons for those decisions.

Specifically, there is no indication in the Cabinet decision of at what stage the sifting will take place. If this is not clarified in the council's decision, the Executive Director and members of the sifting committee may be aware of the appropriate planning officer's view when making a decision and therefore, if the sifting committee says the application shall not go to the planning committee, they are de facto themselves making a planning decision, but not in a transparent manner.

g) to provide a means of improving the quality of services provided to the community.

It has been argued that Parish Council's do not always give planning reasons for their views and sifting will answer this problem. Actually, a strict adherence to our existing advice that planning reasons should be given, or must be given, would improve the quality of service in a cheaper (no extra meetings, expenses etc), and more efficient manner.

The constitution also states you are to have regard to the following when determining a call-in request.

12.4 a) Is the decision against declared policy.

The Localism Act 2011 (still on the state book) establishes an duty to co-operate with partner authorities and we specifically refer to that in our recently-adopted Statement of Community Involvement (SCI). Our SCI states that Town and Parish Councils are key partners in the planning application and plan making process and co-operation with these bodies represents an important element in the Council's approach to community involvement.

The minutes of the Local Plan Task Group quote an officer "The Planner explained that the Statement of Community Involvement (SCI) was a document which outlined how the Council would consult with the public as part of the Local Plan process, on planning applications, and also Neighbourhood Plans.".

It is our declared policy to consult. To now not consult on this important element of how we interact with our partner authorities reduces our SCI to cynical virtue-signalling.

12.4 b)

Is the decision contrary to the views of a key partner authority of the Borough. CALL IN UPHELD BY CHIEF EXECUTIVE – FOR CPP TO CONSIDER

We have no idea as we have not consulted. When the idea was first presented to the Planning Committee I told my parish councils what was being considered and the financial constraint the Borough Council was operating under but had no doubt they would be consulted. I was shocked when, after the Cabinet agenda was printed, to learn they had not been consulted. Sometimes I do not recognise our Borough Council and am reminded more of the County Council of a few years ago.

12.4 c) Has a relevant, material matter not been considered in reaching the decision or has a relevant material matter been overlooked in reaching the decision.

No flowchart of the decision-making process has been considered, no time-table, no consideration of whether just changing one word ("may" to "will" give planning reasons) will be equally effective. No consideration has been given to the possibility that Borough Councillors may have to call in all applications in their ward to avoid the possibility of an error of judgement being made by the three councillors on the sifting panel.

12.4 d) Have the views of Members requesting a call-in been fairly taken into account in arriving at the decisions. so making a call-in unnecessary.

The Leader of the Council will have his view, but I was prevented from making my presentation in full to Cabinet and was asked to sum-up only half way through. The reason given was that there were other issues for the Cabinet to consider and others wishing to speak. The Constitution was not referred to when I was effectively silenced, but I do know that the Chair's decision, whether unconstitutional or not, may not be challenged at said meeting. I therefore challenge it now.

12.4 f Is the matter one which has already been the subject to consultation or debate with relevant interested parties so making further debate through Scrutiny unnecessary.

No it has not.

Finally, we are actively encouraging Parish Councils to engage in the time and cost of Neighbourhood Plans whilst at the same time, in the name of efficiency, considering removing (on the QT) their automatic right, if their views are at variance with an unelected planning officer, for them to be heard by the planning committee. Parish Councils will certainly be confused by these mixed signals. In the end the final decision will be made by the full Council but I hope it will be after scrutiny and consultation so that the decision made by Cabinet last month can be improved."

Call-in Requisition

The call-in was proposed by Councillor J Moriarty and indications of support received from the following:-

- Councillor C Joyce
- Councillor J Collop
- Councillor Mrs J Collingham
- Councillor T Parish.
- Councillor R Bird

Response to Call-in from Chief Executive

I refer to your call in request, which as you will be aware is required to be considered in accordance with the Council's constitution, in particular section 12. The calling in of Cabinet recommendations and executive decisions. Your call in request meets the requirements of 12.3 and hence needs to be assessed against 12.4. In your call in request you do cite the following

12.4 a) Is the decision against a declared policy or budget provision of the Council.

I accept that the SCI identifies Parish and Town Councils as key partners in the context of considering planning applications and in the plan making process. However the proposal presented to Cabinet relates to the internal process and procedures of the Borough Council but does not propose to cease or limit the current practice of consulting with Parish and Town Councils. The cabinet decision cannot therefore in my view be considered to be against a declared policy of the Council. Indeed if it were to be interpreted in this way it would make it very difficult to amend any existing policy or procedure.

12.4 is the decision contrary to the views of a key partner authority to the Borough.

Clearly as indicated above Parish and Town Councils do fall within the definition of 'key partner authorities' in this context, given their integral role in the planning process as identified in the SCI. As you point out there has been no consultation on this proposed policy with Parish and Town Councils and therefore it is not possible to take an informed view as to whether the proposed would be contrary to their views. However it would be difficult to sustain an argument that they are key partners in the planning process on the one hand and give them no formal opportunity to make their views known with respect to a proposal which, is designed to alter in some

circumstances the consequences of their responses to individual planning applications.

12.4c Has a relevant material matter not been consider in reaching the decision, or has a relevant material matter been overlooked in reaching the decision.

The points made in respect of 12.4c do not themselves identify a 'relevant material matter; which has either not been considered or has been overlooked. Option 3 (para 3.3 in the report) reflects the consideration of alternative to the proposed changes that were considered in preparing the report. The sifting Panel Trial also provided the opportunity for alternatives to be considered.

12.4 d) Have the views of Members requesting a call in been fairly taken into account in arriving at the decision, so making a call in necessary.

I note that you were unable to complete your presentation to Cabinet but as you know I was on leave when the meeting took place. I am given to understand that you spoke in excess of 5 minutes which would not seem to be an unreasonable period of time.

Conclusion

Whilst I am unable to uphold your call in request with respect to 12 a,c and d I do believe that the points you make in respect of **12.4.b.** merit further consideration and I do therefore uphold you call in request with regards to this matter.

The report will therefore be remitted to the meeting of the Corporate Performance Panel on 18th December 2017 for consideration and debate of the call in request.

3 Validity of Call-in

3.1 The Chief Executive is satisfied that the call-in is valid in accordance with Standing Order 12.4 (b) i.e Is the decision contrary to the views of a key partner authority to the Borough?

4 Call-in Process

4.1 Standing Orders 15.33 and 15.34 set out the call-in debating procedure, as follows:-

(a) The Proposer of the call-in and his supporters address the Corporate Performance Panel about the call-in and why it should be upheld;

- (b) The Panel Members receive a submission from the relevant Portfolio Holder;
 - (c) The Panel Members receive submissions from Officers;
 - (d) The Panel Members receive submissions from Members and, at the discretion of the Chairman, other interested parties;
 - (e) The Panel debates the call-in (in accordance with this Standing Order) during which they may question or seek further information from any of the four parties referred to in (a), (b), (c) and (d) above;
 - (f) The proposer shall exercise a right of reply after the debate.
- 4.2 Following the debate, the Panel will decide (in accordance with Standing Order 12) either to support the Cabinet's recommendation, or to uphold the call-in.
- 4.3 If the Panel upholds the call-in it may then take one of three courses of action:
- (a) Report to Council, Cabinet or the relevant Cabinet Member requesting that the Cabinet/Cabinet Member's/officer amend or substitute the recommendation(s) or decision(s) or,
 - (b) If the issue is considered urgent or straightforward, formulate a counter-recommendation or amendment; or
 - (c) Investigate the matter further at another meeting within thirty days (beginning with the day after the issue of the notification of the call-in) and then follow the same process as set out above (SO12.8 – 12.10).
- 4.4 If the Corporate Performance Panel:-
- (a) does not end a call-in within 30 days from the date of the decision which has been called in (and the recommendation or decision remains in dispute); or
 - (b) refers a call-in directly to Council under SO 12, the Council shall determine whether to approve the recommendation or decision that has been called-in or to revoke, vary, amend and/or remit it back to the Cabinet/ Cabinet Member for further consideration.