



Hinckley & Bosworth
Borough Council

A Borough to be proud of

COUNCIL
WARDS AFFECTED:

6 SEPTEMBER 2016
All

PROPOSALS FOR REARRANGEMENTS FOR PLANNING COMMITTEE

Report of Chief Executive and Chief Officer (Corporate Governance and Housing Repairs)

1. PURPOSE OF REPORT

- 1.1 To seek approval from Council for changes to the structure and operation of the Planning Committee, to ensure its efficient and effective operation and to ensure that its decisions are firmly based and informed, should they be challenged at Appeal.

2. RECOMMENDATIONS

- 2.1
- i) That Members approve the changes in the Council's Constitution required by proposals 3.4 (i) and 3.4 (ii)
 - ii) That Members approve the arrangements for briefings, site visits and the operation of the Committee, set out in paragraph 3.4 (iii) to 3.4 (v) of the report.
 - iii) That Members support the proposal in 3.4 (vi) of the report, as addressed in more detail on a separate report on Parish/Community Funding.
 - iv) That members are reminded of the importance of the 'Nolan' Principles (Appendix A) and the specific Code of Conduct and Guidance for members of the Planning Committee.
 - v) That the operation and effectiveness of the Planning Committee be reviewed annually.

3. BACKGROUND TO THE REPORT

- 3.1 The portfolio holder for Development Services and the Chair of Planning Committee have raised with me their concerns that the operation of the Planning Committee is not as effective as they would expect, particularly in that a number of decisions are being taken by the Committee - against Officer advice - without the necessary evidence to support such decisions.
- 3.2 Whilst it is entirely appropriate for Members of the Committee to overturn Officer recommendations, there would be no reason for a Planning Committee if that 'check and balance' was not exercised - such decisions must be evidence-based and set

out clearly the planning reasons for reaching such conclusions. Without these elements in place, such decisions are very likely to be overturned at Appeal and, if the rationale for the original decisions is weak, involve the Council in the award of costs against it. These costs will be higher, the less convincing the reason for the original decision.

- 3.3 The concerns, however, are not based on costs alone, important though they are. The Council has a duty to deliver the housing and employment increases, to which it already has given formal commitment and in the locations approved in the Local Plan. Any alterations to that position, especially in relation to specific sites, must be based on hard evidence, not just unsupported opinion/heresay. The reputation of the Council for sound and informed decision-making, consistent with the requirements of planning law and guidance, is vitally important. Developers and communities need to be treated in a fair and even manner, with decisions based on rational consideration of relevant and recorded evidence and debate.
- 3.4 In order to address these concerns, a number of proposals are being made:
- i) **That Planning Committee give serious consideration to agreeing deferrals, on a 'minded to refuse' principle, when applications are first considered, rather than determining contrary to officer recommendation at first pass** - it is suggested the if the Committee is considering issues that are likely to result in a resolution contrary to an officer recommendation, the application be not determined at that meeting, but be deferred to the next meeting for further consideration in the meantime. The decision will be recorded as 'minded to refuse', but will enable any new issues/information to be given proper consideration in advance of the next meeting. At any subsequent meeting, there will be interventions by officers and Members of the Committee only and they will discuss and evaluate the *evidence* introduced at the previous meeting.
 - ii) **That there be a list of 'named' substitute from each of the two current political groups; these substitutes to attend if Group Members send apologies in advance. Substitutes to be designated at the beginning of the Municipal year. For the purposes of 2016/17, the groups to nominate their substitutes at this meeting of the Council.** 'Named' substitutes are to have received the same training and guidance as standing Members of Planning Committee.
 - iii) That Members of the Committee be encouraged to attend site visits for applications on which they vote.
 - iv) **Introducing video footage as part of the office presentation** - the use of video is becoming more common practice elsewhere, although it is by no means universal. It is proposed, therefore, that further research be done into this and that, subject to this research, a trial be introduced for a three month period to see whether this helps the decision making process.
 - v) **That pre agenda/Chairman's Briefings will be arranged in the evenings, to enable wider attendance, and all Committee Members will be invited.** Pre-agenda meetings are currently scheduled for a 2pm start on Tuesdays, three weeks in advance of the relevant Planning Committee meeting. These are an effective way to brief Members in advance of reports being written and allow for views about the merits of the applications to be shared. Attendance at pre-agenda meetings has generally been approximately half the Committee's membership. The fact that many don't attend limits the sharing

of information and sometimes leads to issues being raised at the Planning committee meeting that can be difficult to deal with. To assist in improving this interaction, it has been suggested that an evening pre-agenda briefing be introduced. To establish the most suitable time for this, Committee members would be canvassed and a series of meetings set up for a suggested three month trial. The success of the trial would then be reviewed before any further rollout is considered.

- vi) **That Parishes should be encouraged to pursue Neighbourhood Plans, as with Market Bosworth. This will give the Parish more influence over developments in the area.** A separate report on those agendas addresses this issue.

3.5 In addition, but not for Member decision from this report, Members will be encouraged to read and follow up applications on the weekly list as soon as possible and follow up local concerns of their own or raised with them by residents with the relevant Case Officer. Case Officers will likewise inform local Members of any concerns raised directly with them, so as to ensure the effective flow of information. Moreover, the Committee Chairman will be expected during the meeting to terminate the contribution of any Member who, in the view of the Chairman, is not adhering to the Principles and/or the Code of Conduct/Guidance, which are set out in the Council's Constitution.

3.6 As the proposals 3.4 (i) and 3.4 (ii) will involve change to the council's Constitution, will require a two-thirds majority in favour, if recommendations are to be implemented.

4. EXEMPTIONS IN ACCORDANCE WITH THE ACCESS TO INFORMATION PROCEDURE RULES

4.1 This report is to be considered in open session and, as its recommendations will involve changes to the Council's Constitution, will require a two-thirds majority in favour, if the recommendations are to be implemented.

5. FINANCIAL IMPLICATIONS (AW)

5.1 Planning decisions of the Committee that are based on sound and supported reasons for reaching such conclusions, are less likely to lead to unnecessary costs in defending appeals that have a high likelihood of success. This should lead to savings to the Council over time as such appeals are reduced in number. This will be to the benefit the general fund.

5.2 The direct financial implications of decisions to reject planning applications to where officer advice is to accept, is not readily available. To give an indication of potential savings, over the past three years, appeal costs of £135,357 have been incurred for cases where legal fees are over £2,500 on planning applications overturned at the Planning Committee stage. There has been a significant level of appeals that have been successful over the last three years, with just over 56% (£76,534) being reinstated after the Planning Committee decided to overturn them previously. However, this has reduced significantly in 2015/16. It is not possible to clearly identify the level of successful appeals that may have been avoided if further guidance had been made available and considered by Members at the time of the decision being taken. The table below implies that savings may be possible where the likelihood of success on appeal is a key element of the evidenced deliberations of the Committee in arriving at its decision.

Legal costs for cases over £2.5k	2015/16	2014/15	2013/14	Total
Overtaken by Committee	£49,212	£31,116	£55,028	£135,357
Allowed on appeal	£6,000	£18,635	£51,899	£76,534
Percentage successful on appeal	12.2%	59.9%	94.3%	56.5%

6. LEGAL IMPLICATIONS (MR)

6.1 Section 102 of the Local Government Act 1972 empowers the Council to delegate the carrying out of its functions to a committee, and the determination of planning applications cannot be the function of the Executive.

6.2 The Local Government and Housing Act 1989 requires that appointments to the Planning committee shall achieve a political balance

7. CORPORATE PLAN IMPLICATIONS

7.1 Providing value for money and pro-active services.

8. CONSULTATION

8.1 The following Members have been consulted in the preparation of this report: Chair and Vice-Chair of Planning Committee, Leader and Deputy Leader of the Council, the Portfolio Holder for Development Services, the Leader of the Opposition Group and the Chair of the Scrutiny Commission. Officer consultation has included the Deputy Chief Executive and the Chief Planning and Development Officer.

9. RISK IMPLICATIONS

9.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

9.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion, based on the information available, that the significant risks associated with this decision/project have been identified, assessed and that controls are in place to manage them effectively.

9.3 The following significant risks associated with this report/decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
That decisions of Planning Committee are not based on careful consideration of the fullest evidence and information, available is sufficient time for proper evaluation.	Implementation of the proposals in the paper, particularly those at 3.4 (i) and 3.4 (ii).	Chief planning and Development Officer

10. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

10.1 One of the intentions behind this set of proposals is to ensure fair, even and careful consideration of planning applications across the Borough, irrespective of the location they cover.

11. CORPORATE IMPLICATIONS

11.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Procurement implications
- Human Resources implications
- Planning implications
- Data Protection implications
- Voluntary Sector

Background papers: None

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