

By: Chairman of Planning Applications Committee  
Head of Democratic Services and Local Leadership

To: Planning Applications Committee – Tuesday, 12 April 2011

Subject: RECORDED VOTING AT PLANNING APPLICATIONS COMMITTEE  
MEETINGS AND RELATED ISSUES

Classification: Unrestricted

FOR INFORMATION

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### Introduction

1. The Committee considered a report at its meeting on 20 January 2011. This report is included at **Appendix A** to this report.
2. The Committee resolved that:
  - (a) Selection and Member Services be requested to not consider this matter at its next meeting; and
  - (b) a further report be made to a future meeting of the Committee giving more detailed consideration of this and related issues.
3. During the meeting, Mr J A Davies produced a document setting out concerns over the proposal to record the votes of each of the Committee Members whenever the Committee voted to overturn the Head of Planning Applications Group's recommendations. Mr Davies' comments are included at **Appendix B**.
4. The "related issues" that were raised by Committee members were:
  - (a) Whether there should be a "Cooling Off period" following a vote to overturn the Head of Planning Applications Group's recommendations. This would enable the head of Planning Applications Group to prepare a report, setting out the reasons given by members for doing so, enabling her to comment on them. This, second report would be considered at the next Committee meeting, enabling the original decision to be confirmed, revised or overturned.
  - (b) Whether abstention should be a permitted option if a Member was entitled to vote on a particular application.
  - (c) Whether a vote to overturn the Head of Planning Applications Group's recommendations should be referred to the county Council.
  - (d) Whether the rules of "purdah" should be applied more rigorously during any election period (not just national or County Council elections) when deciding which applications should be reported to the Committee.

## **The comments of Mr Davies**

5. Mr Davies' comments criticised the lack of clarity in the report, specifically the lack of clear grounds for recommending a change to the Constitution.

6. Mr Davies also raised a concern that the effect of the change could be to inhibit members from voting against the Head of Planning Applications Group's recommendations. In particular, he quoted the report and questioned why the way a Member voted could become "a matter of legal significance."

7. Mr Davies suggested that Members should be informed of the legal consequences of overturning a recommendation and that the best way to mitigate this might be for the Committee to prepare its detailed reasons during the meeting itself. If necessary, this should be done by adjourning the meeting whilst the formal wording was drafted before being brought back for approval or amendment.

## **Response by the Director of Law and Governance**

8. The Director of Law and Governance has accepted Mr Davies' comments on the question of clarity and has made the following explanatory comments in response:

*A decision which confirms the Head of Planning Applications Group's recommendations is readily defensible in the courts or at a planning inquiry. This is because the grounds for the decision are detailed and open for all to see. Should the recommendation and decision be successfully challenged, the responsibility would naturally be borne by the head of Planning Applications Group. The Committee itself would have acted in a manner which could not be criticised as it would demonstrably have had regard to the best and most professional advice available to it.*

*Whenever a recommendation is overturned, there is an inherent risk to the County Council associated with a challenge to the decision. The Head of Planning Applications Group is in a difficult position where she needs to justify a decision at any appeal which goes against her professional judgement. This means that the Committee has to ensure that valid Land Use Planning reasons are provided. On occasions, the Planning Inspector can conclude that it is important to establish the reasons that Committee Members voted as they did. In this regard, it is vital that the grounds for the decision are detailed and open for all to see in just the same way as if Members followed the officer advice. This necessitates an accurate record being maintained of the way in which each individual Member voted and the reasons for their decision.*

*The second reason for maintaining a record of the way in which Members voted is that an applicant can challenge that the decision was correctly recorded. Such a challenge automatically fails if the actual voting details are correctly recorded.*

*I also note that there were suggestions expressed at the January Committee meeting that individual Members might be at risk of surcharge or other penalty.*

*This is extremely unlikely. Providing Members have exercised their best judgment and have not broken the Member Code of Conduct (by for example, voting when they have a prejudicial interest) the risk is insignificant. This is therefore certainly not the reason for recording the vote of an individual Member. The risk identified is to the County Council rather than to any individual Member.*

*Mr Davies has expressed the concern that “the authority considers that it will be able to identify those who voted against a recommendation and identify the Members in order to pursue whatever course of action is open to the authority possible against those members for going against the advice of the officer.” To use the record in such a manner would be illegal as this would constitute an attempt to impinge upon the Committee Member’s duty to approach each application with a fresh mind.*

9. In response to Mr Davies’ suggestion that there should be an adjournment during the meeting itself, the Head of Planning Applications Group has advised that this would be unnecessarily prescriptive. There is no expectation that all Members will necessarily have all these reasons in their minds when they vote against the recommendation.

### **Related Issues**

10. Discussion has taken place concerning the related issues raised by Members in Paragraph (4) above. These involved the Chairman, Vice-Chairman, Liberal Democrat Group Spokesman, the Head of Planning Applications Group, and the Director of Law and Governance. The conclusions of these discussions are set out below:

(a) The disadvantages were considered to outweigh the advantages as it would lead to members of the public and the applicants having to attend two meetings where the second one could potentially overturn the decision of the first. The resulting sense of injustice would be exacerbated if the Committee make up was different on the second occasion. The Head of Planning Applications Group also advises that there would be a risk of a challenge on the basis of non-determination.

(b) There is no legal provision which can be used to force a Member of the Committee not to vote in abstention. Indeed, were pressure to be applied to prevent Members from doing so, this would inhibit their ability to approach the application with a fresh mind.

(c) The problems associated with asking the County Council to ratify a decision are considered to be prohibitive. Each Member of the County Council would have to be trained and be in a position to demonstrate that they were only considering the planning aspects of the case during that particular item.

(d) The Head of Planning Applications Group has advised that she always considers whether controversial items with considerable local interest should be reported during an election period. This consideration balances the applicant’s expectation for a timely decision against the amount of influence that

the election period might exert. This decision is taken on a case-by-case basis in consultation with the Chairman.

## **Conclusion**

11. It is worth noting that the original report to the January Committee meeting was made following consideration of a particularly controversial application the previous month. The recommendation to amend the Constitution arose from procedural discussions around that application but was not in any way intended as a response to its outcome.

12. Mr Davies' document was written in response to the lack of clarity in the January report about the legal reasons for the change. The Director of Law and Governance has clarified, in turn, that the reasons for recording the way in which each Member votes are to demonstrate that the decision has been correctly recorded and potentially to assist the Planning Inspector during an Inquiry. It does not (for the reasons given by the Director of Law and Governance in paragraph 8 above) have the effect of making individual Committee Members personally liable for their decisions. Nor does it make Members accountable to anyone within the authority for them.

13. The Director of Law and Governance advises that the original recommendation should stand.

14. Following the discussions set out in paragraph 10 above, the strong recommendation to the Committee is that there should be no instruction to Members of the Committee not to vote in abstention and that the suggestion of referring applications to the County Council should not be pursued.

15. In respect of the suggestion of a "cooling off period", the Committee is recommended, on balance, to agree that the principle of the final decision being taken at one meeting should stand.

16. In the light of the assurances given in Paragraph 10 (d) above, the Committee is also invited to accept that consideration of whether an application should be brought forward during an election period is already taking place and that the Committee Chairman is fully involved in the process.

### **RECOMMENDATION:**

17. The Committee is recommended to:

- (a) note the Director of Law and Governance's advice that the votes of each individual Committee Member should be recorded on those occasions when the Head of Planning Applications Group's recommendation to grant permission or refuse an application is overturned; and
- (b) agree that advice should be reported to Selection and Member Services Committee and (subject to that Committee's agreement) to the County Council for proposed adoption into the Constitution.

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