



To: Executive Councillor for Planning Policy and Transport: Councillor Kevin Blencowe
Report by: Head of Planning Services
Relevant scrutiny committee: Environment 8/7/2014 Scrutiny Committee
Wards affected: All

**PROPOSED NEW CONVENTION FOR PLANNING COMMITTEE
RELATING TO DECISIONS CONTRARY TO OFFICER ADVICE**

Not a Key Decision

1. Executive summary

- 1.1 Planning Committee Members considered a report in January 2014 examining the council's performance with planning appeals and the recent appeal case relating to the redevelopment of 32 – 38 Station Road Cambridge.
- 1.2 The committee agreed a number of follow up actions including the holding of a facilitated member review session and the introduction of a new convention to be followed in the event that the committee is minded to refuse/approve major/significant planning applications against the advice of its officers. The review session was held on 14 April and was supported by external facilitators.
- 1.3 Planning Committee considered a further report in late April detailing how the new convention might be introduced and agreed by a majority that Environment Scrutiny Committee should be asked to look at this issue. The report to Planning Committee and the notes from the discussion at the April meeting are attached at Appendix A and B.
- 1.4 Environment Scrutiny Committee is asked to review the operation of the convention being proposed, to take account of the previous comments of Planning Committee and make a recommendation to Full Council that the convention is introduced. Appendix C outlines the proposed convention.

2. Recommendations

2.1 The Executive Councillor is asked to recommend Council:

- [1] Approve an amendment to the constitution to include a new convention for the Planning Committee involving a deferred decision making process for appropriate cases.
- [2] The convention process to be introduced for a 12 month trial period from September 2014. The convention to apply in the circumstances where the committee resolves that it is minded to refuse or approve major applications schemes contrary to the recommendation of its officers and be subject to the operational arrangements outlined in Appendix C.
- [3] To delegate to the Heads of Legal and Planning Services authority to amend the constitution to include the new convention, amend procedures, update guidance, provide training as necessary to ensure the smooth implementation of the new convention
- [4] To request the Head of Planning Services to provide a review report to Environment Scrutiny Committee on cases where the convention has applied, after 12 months operation

3. Background

- 3.1 In January 2014 Planning Committee considered a report on planning appeals including the 32-38 Station Road/Wilton Terrace case where an award of costs had been made against the council. (The costs claim in relation to the appeals has now been concluded and the council's liability was £170,000 which is lower than was originally anticipated.) A range of actions were suggested at that time and it was agreed that a facilitated review session would be held with committee members and senior officers to consider the outcomes of the 32 – 38 Station Road/Wilton Terrace appeal case. That review took place on 14th April.
- 3.2 One of the outcomes of the review and the various reports that have been considered by the Planning Committee has been the potential benefit to the Council from introducing a new convention for Planning Committee, where decisions contrary to the recommendations from officers on major planning applications are being moved. Full Council in March also agreed that consideration would be given to the introduction of this kind of approach.
- 3.3 A number of councils have introduced a process whereby in the situation where the committee is minded to make a decision contrary

to its officers advice, a minded-to resolution is recorded allowing an agreed period of time for the intended reasons for refusal (or approval where this is the case) to be evaluated for any undue risks. This is to ensure that the risks from any decision have been subject to further consideration and the benefit of additional relevant legal or technical advice (as appropriate) is available before the decision is confirmed. This approach represents best administrative practice and both the Planning Advisory Service and the Local Government Association recommend this way of working.

- 3.4 There are a number of factors for and against the introduction of this approach. These are tabulated below.

A new convention for Planning Committee to deal with decisions contrary to officer recommendation	
Pro's	Cons
<ul style="list-style-type: none"> • Reduces the risk of adverse planning appeal costs and claims of 'unreasonable behaviour' against the local planning authority • Takes stock of the grounds for the 'minded-to' decision and ensures all relevant information about those reasons, and any attendant risks are available to the local planning authority before the decision is confirmed • Enables conditions and reasons and s.106 matters to be properly thought through, outside of the committee meeting 	<ul style="list-style-type: none"> • This approach may give the appearance of the local planning authority having reticence at engaging in the appeal process • May give the appearance that Member (or democratic) discretion is being stifled or constrained • May lead to the impression that Officers are attempting to apply undue influence over member discretion • Increases the possibility of appeals against non-determination which might generate additional work • Delays in concluding major planning applications undermines the council's ability to meet national planning application performance targets

- 3.5 Environment Scrutiny Committee is asked to consider the merits of introducing such an approach. The possible day to day operation of this arrangement is set out in Appendix C and it is anticipated that it would only apply to a small number of major planning application cases.

- 3.6 The convention will need to be designed to address a number of issues and the principles set out in Appendix C cover these:
- When it applies
 - What type of cases it relates to
 - Who initiates it

- What procedure is followed once the convention is initiated
 - Whether presentation of and reconsideration of the entire original officer report needs to take place and whether it is necessary to have public speaking repeated or not
- 3.7 Planning Committee considered this approach previously and the report is included at Appendix A for information. The comments made by Members are included at Appendix B. The principles set out in Appendix C have been amended to take account of Member comments (however a clear steer is needed in relation to the desired approach to public speaking).
- 3.8 The new convention arrangements are an appropriate way of managing the council's risks particularly with major application cases where costs can be significant if a claim against the local planning authority on the grounds of unreasonable behaviour is found to be justified. This will ensure that members have the fullest possible advice and awareness of any undue risks to the council where they are making decisions on planning grounds against their officers' advice.
- 3.9 It is suggested that the convention and any associated arrangements are reviewed after 12 months implementation.

4. Implications

(a) Financial Implications

The new process will involve additional time in decision making on specific types of planning application. The frequency with which this new procedure will apply is expected to be low. External legal or other technical advice may need to be procured from time to time to support good decision making. These costs will be found from the planning service budget.

(b) Staffing Implications

There are no direct staffing implications, some additional time may be needed to prepare additional advice but this is considered necessary to assist good decision making and to manage adverse risks to the council.

(c) Equalities and Poverty Implications

There are no direct equal opportunities implications from this report and no EQIA assessment has been undertaken.

(d) Environmental Implications

There are no direct environmental implications but good decision making through the planning process is a key aspect of delivering sustainable development.

(e) Procurement and risk management implications

There are no adverse procurement implications. The committee convention being considered would support the council's approach to risk management.

(f) Consultation and communication

The recommendations of this report were considered by the Planning Committee on 30/4/14 – the notes of that meeting are attached at Appendix B. The issue was also debated as part of a motion at Council in March and was considered at the Station Road member review session on 14/4/14.

(g) Community Safety

There are no adverse community safety implications.

5.0 Background Papers

6. Appendices

- 6.1 Appendix A – Report to Planning Committee 30/4/14
Appendix B – Notes of Member Feedback, Planning Committee 30/4/14
Appendix C – New convention principles

7. Inspection of papers

- 7.1 To inspect the background papers or if you have a query on the report please contact:

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8.0 Appendices

Appendix A: Report to Planning Committee April 2014

Agenda Item

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee

30/4/2014

WARDS: All

**FOLLOW UP REPORT: 32-38 STATION ROAD APPEAL,
MEMBER REVIEW SESSION AND NEW PLANNING COMMITTEE
CONVENTION FOR OVERTURN CASES INVOLVING
MAJOR/SIGNIFICANT PLANNING APPLICATIONS**

1 EXECUTIVE SUMMARY

- 1.5 Members considered a report in January 2014 examining the council's performance with planning appeals and the recent appeal case relating to the redevelopment of 32 – 38 Station Road Cambridge.
- 1.6 The committee agreed a number of follow up actions including the holding of a facilitated member review session and investigation of the introduction of a new convention to be followed in the event that the committee is minded to refuse/approve major/significant planning applications against the advice of its officers.

2. RECOMMENDATIONS

2.1 That Planning Committee:

A: Notes the outcomes of the review session held on 14th April and the identified actions set out in paragraph 3.4; and

B: Recommends to Full Council that a new convention for the Planning Committee involving a deferred decision making process for appropriate cases is introduced for a 12 month trial period from August 2014. The process to apply in the circumstances where the committee resolves that it is minded to refuse or approve major/significant schemes contrary to the recommendation of its

officers and be subject to the operational arrangements outlined in paragraph 3.6.

3. BACKGROUND

- 3.1 In January 2014 the planning committee considered a report on planning appeals including 32-38 Station Road/Wilton Terrace case. A range of further actions were suggested at that time and it was agreed that a facilitated review session would be held with planning committee members and senior officers to consider the outcomes of the 32 – 38 Station Road/Wilton Terrace appeal case. A new planning committee convention was also suggested where decisions contrary to the recommendation from officers on major/significant planning applications are contemplated.

The facilitated review session

- 3.2 The review session was held on April 14th with 11 members including the Executive Councillor, Planning Committee Chair and Vice-Chair, the Chief Executive and the Heads of Legal and Planning Services attending. The session was facilitated jointly by an external consultant Geoff Cross from the Planning Officers Society and Theresa Higgins a peer member who is the Planning Committee Chair at Colchester Borough Council and also a member of Essex County Council.
- 3.3 The review session was focussed around the role of the planning committee in taking account of evidence and representations in determining planning applications and how to avoid costs awards on appeals in future. The facilitators led the discussion through the following areas:
- The legal context for making planning decisions
 - The councillors role and the framework within that role operates
 - Localism, the Development Plan and the National Planning Policy Framework (NPPF)
 - Duties of elected members on planning committees
 - The planning committee decision framework including the presumption in favour of sustainable development in the NPPF
 - The planning committee decision process and material considerations
 - Reasonableness in decision making and avoiding the risk of costs awards
 - Key issues in the planning history of 32-38 Station Road
 - Use of a deferral process to manage council's risks in overturn cases leading to appeals and relevant experience from

Colchester Borough and Essex County Council in operating a similar approach

- Managing meetings and expectations about the role of the planning committee members

3.4 The review meeting identified a number of key issues and action points that are set out below.

Learning Point/Issue	Action to be followed up/Responsibility
<p>Public perceptions and managing public expectations: Reminder that each planning committee meeting has a “new gallery” in terms of the public who are in the gallery observing the meeting. These observers will have varying degrees of familiarity with the planning process and the role and discretion of committee members.</p>	<ul style="list-style-type: none"> • Review the script read out by the chair at the start of the committee meeting to ensure the content is informative and helpful about the quasi-judicial nature of the meeting and the role and scope of councillors in making decisions on planning applications • Review the guidance notes in the committee agenda papers to see if they contain enough information for the public and members to understand the limits of discretion that apply to the committee • Investigate the production of a committee leaflet or guidance note about the role and function of the planning committee that can be available at the meetings • Investigate sampling feedback from members of the public attending planning committee to see if they understood enough about what was going on or whether we could provide more clarity and/or information to them
<p>Managing disruption in Planning Committees</p>	<ul style="list-style-type: none"> • Review the script read out by the chair at the start of the committee meeting to ensure the content is clear on the way the meeting will be managed if there is disruption.

	<ul style="list-style-type: none"> • Where disturbances at the committee can be anticipated, arrangements for managing this to be discussed at chair's briefing and put in place • Clear guidance for chairs on use of adjournments where necessary
<p>Member training and development.</p> <p>Need to ensure that training is appropriate and targeted so it is suitable for both new and experienced members. New members should be given training before they sit on a committee dealing with planning matters.</p> <p>A mix of types of member development works best for planning committee members including development review (site tours) and briefings, delivered on an on-going basis.</p>	<ul style="list-style-type: none"> • New member training on planning set up for 17th June. • Planning Committee tour date to be confirmed in new municipal year, to take place in the summer • Briefing topics and development needs for planning committee members to be canvassed in first meeting after the elections – to ensure an mix of 'refresher' and new development sessions are provided, in an appropriate way
<p>Advice to members about planning matters</p> <p>Encourage members to speak to planning officers or managers before committee if they have concerns/need advice on potential overturns that are being contemplated</p>	<ul style="list-style-type: none"> • Head of Planning Services to write to all members reminding that officers are here to help with any member queries on committee items • Review the standing guidance in our planning committee agenda papers to see if additional information would be helpful
<p>Deferral process in the event of overturns on significant cases:</p> <p>This was felt to be a helpful approach to managing the council's risks and should be introduced on a trial basis. The approach would involve a "minded-to" resolution resulting in a deferral of the item for further</p>	<ul style="list-style-type: none"> • The proposed planning committee deferral convention was not discussed at the March Planning Committee specifically to enable the outcomes of the review workshop to be incorporated into the approach (this has been picked up). The details of how this might work are included within this report

advice to be obtained and brought back to a subsequent committee	(amended in the light of the review session and comments from last Full Council).
The new deferral convention should also cover minded-to approvals where this is also an overturn of an officer recommendation. Different risks and issues apply but should still be covered by the convention	

The new planning committee convention

3.5 It was agreed that a new convention be introduced where decisions on major or significant planning applications contrary to officers' advice are contemplated. The new procedures will provide the local planning authority with further advice on the implications of the proposed reasons for refusal in terms including their likely 'defendability' and potential for future risk of adverse costs awards for the authority. The new convention will also apply in cases where a minded-to approve planning permission resolution is contemplated. The risk profiles in these types of cases are different but the approach is an appropriate one towards managing the council's risks in the small number of cases that it will apply to.

3.6 The new deferral process:

- The new process will only apply to items considered by the council's main planning committee
- The process will only apply to major/significant planning applications (using the Department of Communities and Local Government (DCLG) definition of major - >10 dwellings or >1,000m² floorspace), and
- Where there is a majority resolution that is minded to make a decision contrary to officer advice
- The procedure will be initiated as appropriate by the Chair/Vice-Chair in consultation with the Head of Planning Services/ City Development Manager. This will operate where the item has been presented by officers, public speaking has taken place and members have debated the merits of the proposal. The Chair of the Planning Committee (or Vice Chair when acting in that capacity) will seek a resolution and the specific grounds upon which the members of the committee agree by a majority that they are minded to refuse planning permission (including the member reasons for that refusal based on relevant planning

policy, technical and other matters which in the committee's judgement means the application should be refused); or alternatively, minded to approve planning permission in which case planning conditions, reasons and s.106 matters may be involved

- The item will then be deferred and officers will prepare a further report providing advice on the committee resolution. This would normally be brought back to the next available meeting but may be delayed to a later meeting if external legal or technical advice needs to be sought
- To ensure safe decision making, the original planning officer's report and the new advice will need to be re-presented and reconsidered by the planning committee. Public speakers will be contacted and given a second opportunity to address the committee, (reconsideration of the items along with further advice and repeated public speaking will address any probity issues arising with a different committee composition)
- The committee will determine if their original minded-to resolution (reasons for refusal) are still appropriate, should be amended or whether the original officer recommendation should be followed, likewise the means by which a permission can be granted with planning conditions and s.106 requirements will be outlined
- The committee's final decision will be confirmed and the decision and reasons for it noted in the minutes of the meeting
- Should the decision result in an appeal, the approach to defending the council's case at the appeal will be managed by officers and reported back to committee if needed.

Conclusions

3.7 The new convention arrangements are an appropriate way of managing the council's risks in particularly major/sensitive cases. It will ensure that members have the fullest possible advice where they are making decisions on planning grounds against their officers' advice. This will reduce the council's potential risk of adverse cost awards against the local planning authority. It is suggested that the convention and arrangements are reviewed 12 months after implementation.

3.8 It is appropriate for scrutiny purposes that Planning Committee recommends this convention approach to Full Council for approval as an addition to the constitution.

4.0. IMPLICATIONS

(a) Financial Implications

The two stage process will involve additional time in decision making on specific types of application. The frequency with which this new procedure will apply is expected to be low. External legal or other technical advice may need to be procured from time to time to support good decision making. These costs will be found from the planning service budgets.

(b) Staffing Implications

There are no direct staffing implications, some additional time may be needed to prepare additional advice but this is considered necessary to assist good decision making and to manage adverse risks to the council.

(c) Equal Opportunities Implications

There are no direct equal opportunities implications from this report and no EQIA assessment has been undertaken.

(d) Environmental Implications

There are no direct environmental implications but good decision making through the planning process is a key aspect of delivering sustainable development.

(e) Procurement and risk management implications

There are no adverse procurement implications. The committee convention being considered would support the council's approach to risk management.

(f) Consultation and communication

The recommendations of this report have been discussed informally with a number of Councillors. The issue was debated as part of a motion at Council and was considered at the member review session referred to above on 14/4/14.

(g) Community Safety

There are no adverse community safety implications.

5.0 Background Papers

6.0 Contacts

The author and contact officer for queries on the report is Patsy Dell,
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Appendix B: Planning Committee Member comments

30 April 2014: Planning Committee Item 5b: Notes from meeting;

In response to the report the Committee made the following comments:

- i. A definite conclusion is required if public speakers are required for a second time.
- ii. If public speakers are permitted at the second meeting should this be open to those who made written representation but did not speak at the first meeting?
- iii. Reservations expressed regarding public speakers. If public speaking is permitted at the second meeting this should only be open to those previous speakers but what would the benefits be, is this appropriate?
- iv. It is the Committee's right to go against Officer recommendation.
- v. More time is needed to look at the detail.
- vi. Welcomed the suggestion of being passed to Environment Scrutiny Committee.
- vii. While it is right and legal to overturn an Officer's recommendations Members of the Committee must behave responsibly.
- viii. Issue of continuity needs to be addressed, should the same Committee Members who made the original decision make the second decision?
- ix. Looked at the similarities to that of a jury who had the right to ask the Judge for more information when considering a case.
- x. Noted that the Jury were protected from the public in terms of expressing an opinion in the gallery.
- xi. Questioned if it was possible to ensure the same Committee Members for this process.

Suggested Changes to the report:

- Paragraph 3.4 of the Officers report:

Suggested additional action / responsibility to be included:

Members of the public must not express their views to the Committee during the determination of the application.

- Paragraph 3.6 of the Officers report (bullet point 4):

Expressed concern at the phrase 'The procedure will be initiated as appropriate by the Chair / Vice-Chair in consultation with the Head of Planning Services / City Development Manager' as this should be a Committee decision/ process and questioned what this would mean in practical terms.

- Paragraph 3.6 of the Officers report (bullet point 5):

Change of wording (new text underlined)

The item will then be deferred and officers will prepare a further report providing relevant additional advice on the committee resolution. This would normally be brought back to the next available meeting but may be delayed to a later meeting if external legal or technical advice needs to be sought

- Paragraph 3.7 of the Officers report:

Change of wording (new text underlined and original ~~struck through~~)

The new convention arrangements are an appropriate way of managing the council's risks in particularly major/sensitive cases. It will ensure that members have the fullest possible advice where they are making decisions on planning grounds against their officers' advice. This will reduce the council's potential risk of adverse cost awards against the local planning authority. It is suggested that the convention and arrangements are reviewed after 12 months ~~after~~ of implementation.

Appendix C: The new convention principles

- The new process will only apply to major planning applications considered by the council's planning committee (using the Department of Communities and Local Government (DCLG) definition of major - >10 dwellings or >1,000m² floorspace), and
- Where there is a majority resolution that is minded to make a decision contrary to officer advice
- The procedure will be initiated as appropriate by the Chair/Vice-Chair in consultation with the Head of Planning Services/ City Development Manager.
- This convention will operate where the item has been presented by officers, public speaking has taken place and members have debated the merits of the proposal. The Chair of the Planning Committee (or Vice

Chair when acting in that capacity) will seek a resolution and the specific grounds upon which the members of the committee agree by a majority that they are minded to refuse planning permission (including the member reasons for that refusal based on relevant planning policy, technical and other matters which in the committee's judgement means the application should be refused); or alternatively, minded to approve planning permission in which case planning conditions, reasons and s.106 matters may be involved

- The item will then be deferred and officers will prepare a further report providing relevant additional advice on the committee resolution. This would normally be brought back to the next available meeting but may be delayed to a later meeting if external legal or technical advice needs to be sought
 - To ensure safe decision making, the original planning officer's report and the new advice will need to be re-presented and reconsidered by the planning committee. Public speakers will be contacted and given a second opportunity to address the committee, (reconsideration of the items along with further advice and repeated public speaking will address any probity issues arising with a different committee composition)
 - The committee will determine if their original minded-to resolution (reasons for refusal) are still appropriate, should be amended or whether the original officer recommendation should be followed, likewise the means by which a permission can be granted with planning conditions and s.106 requirements will be outlined
 - The committee's final decision will be confirmed and the decision and reasons for it noted in the minutes of the meeting
 - Should the decision result in an appeal, the approach to defending the council's case at the appeal will be managed by officers and reported back to committee if needed.
-