

# AUDIT COMMITTEE

## Constitutional Amendment – Restriction on Cabinet Members as Members of the Planning and Highways Regulatory Committee

Report of the Chief Executive  
25<sup>th</sup> June 2008

### PURPOSE OF REPORT

To consider whether in the future Cabinet Members should no longer be permitted to take part in the consideration of planning applications as members of the Planning and Highways Regulatory Committee.

**This report is public**

### 1.0 RECOMMENDATION

**That Audit Committee consider the matter of whether or not Cabinet Members should no longer be permitted to take part in the consideration of planning applications as members of the Planning and Highways Regulatory Committee.**

### 2.0 Introduction

2.1 A report has been requested by a Member on a possible change to the Council's Constitution to prevent Elected Members being on both Cabinet and the Planning Committee.

### 3.0 Background

3.1 Members will be aware that as a matter of law, planning decisions are a non-executive function and must be dealt with by a Committee of Council and not by Cabinet. However, there is nothing in the legislation to prevent members of Cabinet being members of the Planning and Highways Regulatory Committee (Planning Committee). Guidance for Members on dealing with planning matters is set out in the Council's Protocol on Planning, and the relevant parts are summarised below.

3.2 There is a need for Members to take particular care in determining planning applications at the Planning Committee not only to declare any interest they may have in accordance with the Code of Conduct and to withdraw from the meeting appropriately, but also to ensure that they do not allow there to be any perception of 'Predetermination'.

3.3 "Predetermination" is where a Member closes their mind to the merits of any arguments relating to a particular application, and makes a decision without taking them into account.

- 3.4 Both sides, applicant and objector, should have an opportunity to put their view forward and the decision making body must consider both sides before coming to its decision. The Member's mind should not be closed until the final decision is made. A Member's mind will be closed if they have already come to a decision on an application prior to entering the Council Chamber. This is predetermination. A decision will be open to challenge if a Member appears to have already decided how they will vote at the meeting so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.
- 3.5 It is important also that party politics do not play a part in the determination of planning applications and each decision should be made on its own merits, within the Development Plan framework, supported by legislation, government advice and other Council land use policies. Therefore each decision has to be made on the information put before the Committee and should take into account the development plan, the impact of the individual development and any individual site characteristics – not party politics.
- 3.6 As a Member of the Planning Committee the time for decision making is after the Members have heard all relevant considerations i.e. after the application has been presented to the Members in the Committee meeting and when the presentation of the application is completed. Therefore, a decision should not be made before the agenda is sent out, at a site visit or immediately before the meeting begins. If a Member has made their mind up before the application is fully presented then this renders the decision open to challenge. This would be on the basis that the application was predetermined, was not considered fairly and that the Member's conduct showed bias. To predetermine an application flies in the face of the principle of the rule 'to hear both sides'.
- 3.7 Where the Council is the applicant or the landowner, and a Member is both a Member of the Planning Committee and also a Cabinet Member with ongoing land-owning responsibilities, it is arguable that the issue of predetermination may arise as a result of the Member's perceived proximity to the proposal through discussions in Cabinet. There is a risk that even an apparently genuine consideration of the planning application by such a Member may be perceived as a sham. In the event of such a Cabinet Member choosing to participate in the Planning Committee decision, and in order to avoid the possibility of a real risk of a perceived closed mind, the Member should be able to demonstrate that they have approached their dealings with the proposal with particular scrupulousness, and should spell out at the outset of any debate at Planning Committee that, notwithstanding their Cabinet role, responsibilities and other decisions in Cabinet, here only planning functions are exercised and planning considerations relevant. They should also make it clear that they approach the application debate with a wholly open mind and a preparedness to be persuaded either way.
- 3.8 However, the simple fact that a Member has been involved in a decision to promote the development of land in the public interest, does not necessarily prevent them from making decisions on the matters of detail. Members approving specific land use allocations in a Local Development Framework for example, would not be prevented from deciding subsequent planning applications. They would be expected to use their decision making abilities to ensure that schemes conform with the requirements of the Framework.

3.9 Advice has in the past been given to Planning Committee members who are also members of Cabinet, to prevent problems arising where development proposals have been the subject of Cabinet decisions, resulting eventually in the submission of a planning application by the developer.

3.10 The Council's Constitution could be amended to state that Cabinet Members may not also be Members of the Planning Committee.

#### **4.0 Options and Options Analysis (including risk assessment)**

4.1 Option 1 – to amend the Council's Constitution to state that Cabinet Members may not also be Members of the Planning Committee. In accordance with Article 15 of the Constitution this will require a recommendation from this Committee to full Council. Should Council adopt this amendment it will then be necessary for a number of Members to be replaced as members or substitutes on Planning Committee or to resign as Cabinet Members.

4.2 Option 2 – to take no action with regard to amending the Constitution and continue to rely on the individual member to ensure that they either withdraw from the determination of planning applications where Cabinet has been involved in the development process or take steps to make it clear that they are approaching the application debate with an open mind.

#### **5.0 Conclusion**

5.1 Audit Committee is requested to consider whether it would be preferable to impose a restriction on Cabinet Members taking part in the determination of planning applications in order to avoid any situations where there might be a perception of predetermination or bias.

<b>RELATIONSHIP TO POLICY FRAMEWORK</b>
None
<b>CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</b>
None
<b>FINANCIAL IMPLICATIONS</b>
There are no direct financial implications as a result of this report.
<b>SECTION 151 OFFICER'S COMMENTS</b>
The Section 151 Officer has been consulted and has no comments to add.
<b>LEGAL IMPLICATIONS</b>
The Council's Constitution provides for amendments to the Membership and Terms of Reference of Committees to be recommended to full Council. Legal Services have been consulted and have no further comments.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments.

**BACKGROUND PAPERS**

Protocol on Planning (Part 7, Section 5 of the Council's Constitution)

**Contact Officer:** Gillian Noall

**Telephone:** 01524 582060

**E-mail:** [gnoall@lancaster.gov.uk](mailto:gnoall@lancaster.gov.uk)