

AUDIT COMMITTEE

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

**Report of the Chief Executive
24th September 2008**

PURPOSE OF REPORT

To provide the Committee with a risk assessment and information about practice within other local authorities to enable members to consider whether Cabinet Members should be excluded from taking part in the consideration of planning applications as members of the Planning and Highways Regulatory Committee.

This report is public.

RECOMMENDATIONS

- (1) That the Audit Committee notes the content of this report.**
- (2) That the Committee considers the matter of whether or not to recommend to Council that a Constitutional amendment be made, excluding Cabinet Members from taking part in the consideration of planning applications as members of the Planning and Highways Regulatory Committee.**

1 Introduction

- 1.1 On 25th June 2008, the Audit Committee considered a report from the Chief Executive, asking Members to consider whether it would be preferable to impose a restriction on Cabinet Members taking part in the determination of planning applications, to avoid any situations where there might be a perception of predetermination or bias.
- 1.2 The Committee asked for further information about two particular issues before considering the matter:-
 - that the City Council undertake a risk assessment to determine whether decisions made by Members on both Cabinet and the Planning and Highways Regulatory Committee could leave the Council open to challenge
 - that the City Council consider whether other Local Authorities allow Members of their Cabinet/Executive to also serve on their planning regulatory committees.

1.3 This report provides Members with further information on these two issues.

2 Arrangements made in other Authorities

2.1 13 local authorities responded to a request for information about the arrangements they have in place regarding Cabinet/Executive members also serving on Planning Committees. Cabinet Members sit on the Planning Committees at 7 of those Authorities. Cabinet Members do not sit on the Planning Committees of 4 of the Authorities. 2 of the Authorities only allow the Cabinet Member with responsibility for planning to sit on their Planning Committees.

2.2 The responses are shown in full in a table at Appendix 1.

2.3 Appendix 2 provides an extract from the document "Local Government Act 2000: Guidance to English Local Authorities" issued by the Office of the Deputy Prime Minister in 2000. This guidance, referred to in Appendix 1, was issued to assist with the content and operation of new constitutions and the processes of changing to or revising a new constitution.

3 Options and Options Analysis (including risk assessment)

3.1 The options set out in the original report were:-

- 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.
- 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.

3.2 Some relatively minor risks have been identified with Option 1 – firstly, that Political groups might find it difficult to put forward enough non-Cabinet Members with availability to attend the daytime meetings of Planning Committee. The Council has flexibility to both reduce the numbers on committees and adjust their timings to accommodate members' availability. This residual risk is therefore of low likelihood and impact. Furthermore, with this option, the Council would lose experienced Members serving on either Planning Committee or Cabinet (depending on which role they relinquished), although this could also be viewed as creating a Member Development opportunity for the replacement Members, who would gain valuable experience and therefore potentially widen the Member skills base.

3.3 Option 2 relies on Members having regard to whether any prior involvement they might have had in relevant Cabinet discussions could suggest predetermination or a perception of bias when a planning application comes before the Planning Committee. In this instance, the individual Member concerned would have to consider whether an observer might take the view that they would not be able to consider the planning application with an open mind. If a Member chooses not to withdraw from considering a planning application in such circumstances, they must

clearly demonstrate that they are doing so with an open mind. Two risks arise from this reliance:-

- 3.4 Failure of a member to withdraw from Planning Committee or clearly demonstrate that they are considering the planning application with an open mind might result in a challenge to the Committee's decision. This could be to by way of appeal to the Secretary of State by the applicant if the planning application were refused, or by way of an application for judicial review in the High Court by a third party in the event that the planning application were granted. The potential financial impact from any legal challenge could be significant. There would be the Council's own defence costs and, if the Council were unsuccessful, potentially the additional cost of an award of costs to the other party. Although it is considered fairly unlikely that a Member would consider the same issue at Cabinet and Planning Committee without withdrawing or taking adequate steps to demonstrate an open mind at the Planning Committee stage, the financial impact could be major if they did.
- 3.5 The Council's and/or individual Member's reputations could suffer if there is a successful legal challenge to the Committee's decision. If there is a successful challenge, then it is highly likely that the incident would be reported in the local press.
- 3.6 Alternatively, having regard to the guidance at Appendix 2, a third option is available – i.e. that the Constitution be amended to state that the relevant Cabinet Member with responsibility for planning matters be included in the membership of the Planning and Highways Regulatory Committee but that he or she should not be the Chairman. This option would provide for a full exchange of information between the Cabinet and the Planning and Highways and Regulatory Committee, in line with the guidance.

4 **Conclusion**

- 4.1 In the light of the information contained in this report, 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.

RELATIONSHIP TO POLICY FRAMEWORK
None
CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)
None
FINANCIAL IMPLICATIONS
There are no financial implications as a result of this report.

SECTION 151 OFFICER'S COMMENTS

The s151 officer has been consulted and her comments have been reflected in the report.

LEGAL IMPLICATIONS

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 her comments have been incorporated in the report.

BACKGROUND PAPERS

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

Audit Committee agenda and minutes for the meeting on 25th June. Agenda item 9; Minute 6.

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