

Cllr Fay Gooch
Chair, Democracy & General Purposes Committee
Maidstone Borough Council
Maidstone House
Maidstone
ME15 6JQ

21 June 2020

Dear Cllr Fay

**RULE 3.2: AGENDA ITEM REQUEST
REVIEW OF ARRANGEMENTS EMPOWERING PLANNING OFFICERS TO DEFER OR OVERTURN
PLANNING REFUSALS BY ELECTED MEMBERS**

1. I write to request that the following matter is included in the agenda of the Democracy & General Purposes Committee on 01 July 2020.
2. I would like a review of Rule 30.3 in the Council Procedure Rules (contained in Section 3.1 of MBC's Constitution), being the powers of the MBC's senior planning officers where members wish to refuse a planning application: -

30.3 (a) If the Head of Planning and Development, on the advice of the Legal Officer present at the meeting, believes that the Planning Committee's reasons to justify refusal/the imposition of conditions are not sustainable, the decision of the Planning Committee will be deferred to its next meeting. The Committee itself may also agree to defer consideration of an application for the same reasons.

(b) If, at that meeting, the Planning Committee votes to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development, on the advice of the Legal Officer present, will request Councillors to refer the consideration of the application to Part II of the meeting, to offer Councillors further advice on the legal and financial implications, and the likelihood of success at appeal. If the Committee still decides to refuse the application/impose an unreasonable condition, the Head of Planning and Development will on the advice of the Legal Officer present and in consultation with the Chairman of the meeting, immediately after the vote has been taken, refer the application to the Policy and Resources Committee for determination.

3. I have studied the standing orders of a number of neighbouring councils so as to establish whether these contain any comparable provisions to MBC's Rule 30.3. Where careful reading has not

identified such powers, I have contacted a senior member or officer of that council so as to “double check”.

4. In summary, of the councils surveyed, MBC appears to give the most power to its senior planning officers to frustrate elected members wishing to refuse a planning application.

	Officer Power to defer decisions (Note 2)	Officer Power to move to closed session (Part II)	Officer Power to refer decision to another body	Minimum no of meetings to refuse (where opposed by officers)
Maidstone	✓	✓	✓	3
Ashford				1
Canterbury				1
Medway				1
Sevenoaks	(Note 1)			1
Swale	✓			2
Ton & Malling	✓		✓	3
Tunbridge Wells				1

Notes

1. At Sevenoaks, Officers can recommend a matter be deferred but a decision on deferral is solely at the discretion of the chairman of SBC’s Development Control Committee.
 2. There are of course member powers to defer decisions.
5. There have been at least two instances in the past eighteen months where the Planning Committee has moved to refuse planning permission and planning officers have intervened to in effect disallow the proposed decision.
 - 5.1. On 08 November 2018, MBC’s Planning Committee voted 7-4 (with 1 abstention) to refuse planning permission for the later stage of the Hermitage Park development. Planning officers intervened and the matter was instead deferred so as to allow “another go”. On 29 November 2018, the Planning Committee gave in to officer-pressure and narrowly voted to allow the application.
 - 5.2. On 11 June 2020, MBC’s Planning Committee voted narrowly to refuse an application for outline planning permission for 440 houses at Otham. This was followed by a clearer vote (9-3 with 1 abstention) to refuse detailed planning permission for the same scheme. Again, Planning officers intervened so as to defer the two applications with these due to return to the Planning Committee on 25 June 2020 i.e. this week.

It is notable in this case that the interregnum created by the planning officers’ deferral is facilitating all manner of sabre-rattling by the developer. It might be suggested that this is intended to add to pressure on elected members.

Conclusion

6. In my view, Rule 30.3 ought to be removed. It is elected members who are accountable to the voters in this Borough for planning committee decisions, whether those decisions are to grant permission for unpopular developments or increase the risk of adverse costs. The role of unelected planning officers should be to support elected members, including where elected members wish to refuse applications that planning officers had otherwise recommended for approval. Of course, another option available to members would be to remove just some of the aspects of Rule 30.3.
7. You will be aware that should the matter be discussed at our meeting on 01 July 2020, the method of progressing the matter open to the committee would be to request an officer-report on the subject. Consequently, I would suggest including this matter on the agenda for that meeting should not create any difficulty whatsoever.

Yours sincerely



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CC. Cllr Richard Webb, vice-chairman, Democracy & General Purposes Committee