

Planning Referrals Committee – Short Briefing Paper on Current Arrangements, Examples of Arrangements at Other Local Authorities and Possible Options

1. Introduction

This paper sets out possible options for the arrangements for managing risk in relation to planning decisions. It also sets out the Council's current arrangements, examples of arrangements at other local authorities in Kent and some beyond who have similar procedures. The research is by no means exhaustive and it is apparent that everywhere approaches planning delegations and procedures differently in relation to committee arrangements.

2. Maidstone's Current Arrangements

The current arrangements are set out in section 2.2.8 of Part 2 of the Constitution (Composition and Purpose/Functions of the Planning Referrals Committee), section 29.3 of Part 3.1 of the Constitution (Planning Decisions Which Have Significant Cost Implications) and section 17 of the Local Code of Conduct for Councillors and Officers Dealing With Planning Matters (Planning Decisions Which Have Significant Cost Implications) as follows:

2.2.8 of Part 2 of the Constitution (Composition and Purpose/Functions of the Planning Referrals Committee)

Membership: 3 Councillors

Purpose: To determine planning applications referred to it by the Head of Planning and Development if s/he is of the opinion that the decision of the Planning Committee is likely to have significant cost implications.

Section 29.3 of Part 3.1 of the Constitution - Planning Decisions Which Have Significant Cost Implications

- (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, immediately after the vote has been taken, refer the application to the Planning Referrals Committee for determination.

Section 17 of the Local Code of Conduct for Councillors and Officers Dealing With Planning Matters - Planning Decisions Which Have Significant Cost Implications

- (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 justifying a resolution to refuse/impose conditions are not sustainable, that decision of the Planning Committee will be deferred to its next meeting. The Head of Planning and Development will give advice on this before any vote is taken. The Committee itself may also agree to defer consideration of an application for the same reasons.
- (b) If, at that next 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 (private session), to offer Members 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, immediately after the vote has been taken, refer the application to the Planning Referrals Committee for determination.

Note: The wording in Section 17 of the Local Code of Conduct for Councillors and Officers Dealing With Planning Matters is slightly different from that in Section 29.3 of Part 3.1 of the Constitution

3. Examples from other Councils in Kent

Swale

No Planning Referral Committee, the Head of Planning can defer the item to next meeting as set out below:

If the vote does not follow the Officer recommendation then:

- (a) The Chairman will invite the Head of Planning to consider if the application should be deferred in accordance with Part 3 of the Constitution. If the application is deferred to that next meeting, the Head of Planning will advise Members of the prospects of such a decision being challenged on appeal and on the implications of a cost application being made against the Council.

(b) If the decision is not deferred to the next meeting, a further motion must be made to refuse the application. A detailed minute of the Planning Committee's reasons (which should be full, clear and convincing) should be made by the Democratic Services Officer and a copy placed on the application file. The courts have expressed the view that such reasons should be clear and convincing. The Chairman should also give the Planning Officer the opportunity to explain the implications of any decision contrary to his/her recommendation.

Shepway

Take particularly controversial applications to full Council.

Tunbridge Wells

No referral process or option for an Officer to defer an item.

Ashford

No Planning Referral Committee, Officers can recommend deferral to a later meeting of the Planning Committee as set out below:

"In cases where Members propose to make a decision contrary to Officers' advice, Officers may **request** deferral (which would remain at the discretion of the Committee) but only in the following exceptional circumstances where the complexity of the case demands:

- In order to formulate proper summary reasons and/or appropriate conditions and/or planning obligations in relation to a grant of permission.
- In order to formulate effective full reasons in relation to a refusal of permission in the light of Members' views at the meeting.

Requests would be made only in exceptional circumstances where the issues arising are so complex that Officers consider the Council's interests are best served by a deferral to allow time to prepare such."

In such cases the "first" Committee would make a resolution that it is minded to grant/refuse whilst the "second" Committee would make the formal decision and give reasons and agree conditions etc. This is necessary as a matter of law to avoid the situation of one Committee formulating reasons etc. for a decision taken by a different Committee which would be legally problematic. (Minute No. 72/6/08 refers).

Tonbridge and Malling

No obvious referral process.

Sevenoaks

Procedures are focussed on pre-meeting action with advice on how to raise concerns and the option for Officers to withdraw a report. At the meeting itself an Officer can recommend that a decision be deferred but

only the Chairman can decide whether or not to accept that recommendation.

Gravesham

Regulatory Board has no referral or Officer deferral mechanism.

4. Sample of Councils with Planning Referral Committees

Chichester

In the event that the Committee is minded to determine an application in a manner which is contrary to the Officers' recommendation and the Officers have identified this as being a major departure from the Development Plan or inconsistent with the policies of the Council, the application will be referred to the Council's Planning Applications Referral Committee for determination with a recommendation from the relevant Area Development Control Committee.

Harrogate

Have a Planning Committee and Planning Referral Committee. The Planning Referral Committee has 16 Members on a politically proportional basis and membership is drawn from the widest practicable geographical spread of Ward Members.

The Borough Solicitor or their representative makes a decision to refer the application where a decision the Committee wish to make is contrary to policy or could lead to costs being awarded against the Council, the application will be deferred by the Solicitor present at the meeting and brought to another meeting of the Committee or the Referrals Committee. The Committee meet fairly regularly and consider referrals from the Planning Committee as well.

St Albans

Have a Planning Referral Committee to deal with amongst other items particularly contentious applications.

5. Possible Options

When reviewing possible options consideration needs to be given to how we will provide a check and balance for Planning Committee decisions and reduce financial and legal risk for the Council.

1. Increase the size of the Planning Referrals Committee.
2. Retain current arrangements.
3. Change the referral body. Head of Planning and Development to refer decisions to Policy and Resources Committee following the same procedure as for referral to the Planning Referrals Committee

and abolish the Planning Referrals Committee. Consideration would need to be given to training for Policy and Resources Committee Members.

4. Adopt a model similar to one of the Kent Councils above focussed on pre-meeting identification and resolution of issues with a back stop of the Head of Planning and Development being able to recommend or defer an application where there is a major risk to the Council and that item is deferred to a later meeting of the Committee (essentially the first part of our present process).