

Report to the Constitution and Members Services Standing Scrutiny Panel



Date of meeting: 20 February 2012

Portfolio Holder:

Subject: Executive and Regulatory Council Decision-Making

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Recommendations:

That a report be submitted to the Overview and Scrutiny Committee and the Council recommending the following changes to the Constitution:

(a) District Development Control/Area Plans Sub-Committees/Licensing Committee/Sub-Committees

That the following paragraph be added to the terms of reference of the District Development Control Committee (as paragraph 6), Area Plans Sub-Committees (as paragraph 13) and the Licensing Committee (as paragraph 8):

"(...) The Committee/Sub-Committee*, in exercising its powers and duties under these terms of reference, shall disregard any connection with the Council's property interests when taking regulatory decisions on behalf of the Council except in any case where the proposal has merits in planning terms."

*as appropriate

(b) Conduct of Business by Licensing Committee and Sub-Committees

That paragraph 5.1 (b) (i) of the document entitled "Conduct of Business by Licensing Committee and Sub-Committees" be amended to read as follows (addition shown in bold text):

"(i) The rules on declarations of interests shall be firmly applied. So as to avoid any appearance of bias, members of the Licensing Committee or of any Sub-Committee shall disregard any connection between a licensing decision and the Council's property interests and shall deal with such business solely in accordance with statutory licensing procedures and the Council's policy in that regard."

The Executive/Cabinet

(c) that Paragraph 2.2 of the Executive Procedure Rules (entitled "What Business?") be amended by the addition of the following paragraph:

"In dealing with any of the above-mentioned business and, in particular, any matters relating to the Council's property interests, the Cabinet, Cabinet Committees and individual portfolio holders acting under delegated powers shall be mindful that any such decision will not pre-determine any subsequent regulatory decision by the authority which may arise."

Report

1. At its meeting on 4 October 2011, the Panel recommended to the Overview and Scrutiny Committee that their work programme should be extended to allow consideration of any amendments to the Constitution needed to clarify the Council's role as regulatory authority and landowner. This recommendation was subsequently approved by the Overview and Scrutiny Committee and this report submits proposals for clarifying within the Constitution how these two potentially conflicting roles should operate.

Implications of Different Council Roles

2. In the previous report, the Panel were advised that the question of the need to separate the Council's general role as landowner from its role as regulatory authority needed to be at the forefront of decision making. The particular Council functions which were relevant to this issue were planning and licensing.

3. The Panel recognised that executive decisions on service provision were made on the basis of legality, probity and financial/technical considerations. It was accepted that the regulatory decisions followed separate processes and should not take account of the Council's property role. It was also noted that the current constitution clearly distinguishes those functions which may be dealt with by the Executive (e.g. managing the Council's property portfolio) and these other regulatory roles which do not fall to the Cabinet.

Review of the Constitution

4. A review has been carried out of the need to amend any constitutional requirements so as to specify the difference between landowner and regulatory decision-making and recommendations are included at the commencement of this report designed to clarify these.

5. There are three changes:

(a) in the terms of reference of the District Development Control and Area Plans Sub-Committees;

(b) in the terms of reference and operational rules of the Licensing Committee and its Sub-Committees; and

(c) in the Executive Procedure Rules.

6. Items 5(a) and (b) are designed to make it clear that regulatory decisions made by those bodies must not normally take account of the Council's property interests in whatever form they may arise. This might apply for instance to planning applications relating to the Council's property or licensing decisions of a similar nature. It is of course difficult for Councillors to disregard the decisions made by the executive on property matters but it is also clear that planning committees must be scrupulous in assessing proposals according to planning requirements, including any legitimate discretions which may be exercised. The same could be said of licensing matters affecting a Council owned property.

7. However, there may be situations where a decision relating to the Council's property might have planning merits as well as improving the Council's property. A proviso is therefore made in the proposed amendment that if a proposal has planning merits this would be a legitimate discretion for a planning committee to exercise. This would be the position for any other landowner and it is felt that the same should apply if the landowner is actually the Council. A similar discretion might apply to the New Homes Bonus where housing proposals might also have planning merits.

8. Item 5(c) sets out a proposed amendment to the Executive Procedure Rules which is designed to make clear that Cabinet members must always have in mind that making an executive decision on a property matter must not pre-determine any regulatory decision (whether planning or licensing) which might arise.

9. Having examined the constitution, these issues have not previously been written down in the manner now proposed. However, there has always been advice in the Planning Protocol regarding conflicts of interest which can arise in planning. At the last meeting, the Panel asked the Standards Committee to consider reviewing the Planning Protocol with this in mind and also to offer similar advice on licensing matters. This matter is due to be discussed by the Standards Committee at its next meeting.

Conclusion

10. It is hoped that the proposed additions to the constitution will assist in member understanding of the difference between the property and regulatory roles. As has been said, this will be supported by advice in a new protocol and will be dealt with as part of training for members of the Council as the years go by.