

Wiltshire Council

Standards Committee

14 November 2019

Public Participation – Protocol 4 of the Constitution

1. Following the referral of the proposed Protocol 4 revisions back to the Standards Committee by Full Council on 9 July 2019, officers received representations on 9 October 2019 from a member of the public, Mr Paul Jubbie.
2. Mr Jubbie's representation is attached at **Appendix A**. In summary, it noted that many elements of the proposed Protocol 4 had been adopted or adapted from a guidance document, "Probity in Planning for Councillors and Officers", which was itself referenced in the revised document.
3. Whilst Mr Jubbie initially identified confidentiality to his email he subsequently questioned why his concerns were not included in the standards report and Officers confirmed that they would be raised before the Standards Committee. This then sets out the legitimate purpose of sharing this information with the Standards Committee
4. The representation in particular noted an element within that guidance which was not adopted within the proposed Protocol 4, and that Mr Jubbie felt should be included. That element states:

'Officers and serving councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on it'
5. The Constitution Focus Group had previously met to reconsider the proposed changes to Protocol 4 on 2 September 2019 as detailed in the main report. Therefore, all its members were emailed the representation from Mr Jubbie along with officer comment, to determine whether they believed further amendments should be made to their recommendation to the Standards Committee.
6. The Focus Group have since confirmed that they do not believe the detail referenced in paragraph 4 above should be included within Protocol 4 of the Constitution.
7. It was noted that the guidance note referenced was prepared by Trevor Roberts Associates for the Planning Advisory Service with the support of the Local Government Association. It is therefore one planning agent company's perception of best practice, and is not statutory guidance nor does it purport to be legal advice.
8. The statement referenced above, which is found on page 6 of the guidance, introduces the concept of a blanket provision against both officers and members to act as planning agents, but in the opinion of officers and the focus group this is not

supported by reference to any underlying statutory or legal requirements that would create such a prohibition.

9. Planning officers would face such a prohibition because of the terms and conditions of employment applied generally to all officers in accordance with Paragraphs 4.13-4.16 of Part 15 of the Constitution (Human Resources Code of Conduct). As those terms and conditions are agreed when taking up employment, there is no interference with an employee's human rights.
10. Elected Members, however, do not enter into an employment relationship with the Council but rather are elected by constituents to represent those constituents. It is recognised that the role of an elected member may not be full time, and that often members do have careers that run alongside their elected member role.
11. Elected members like all citizens have a right to pursue their chosen career and any interference with their private life must be necessary and proportionate. Should an application come before the Council in which they have a disclosable pecuniary interest (which includes a matter which they are directly involved as part of their employment) they would be obliged to not participate or vote on the matter and are at risk of prosecution should they choose to do so (Localism Act 2011). This is necessary and proportionate.
12. However, attempting to apply a blanket prohibition on elected members pursuing their chosen career when they are not involved in a decision-making role and when on occasions it may not create any perception of actual or perceived bias may not be justifiable as necessary and proportionate. If no such blanket prohibition is applied and the matter does not relate to an application they are involved with (a disclosable pecuniary interest) there would still be an obligation on the Councillor to consider on a case by case basis whether the interest amounted to a non-pecuniary interest such that a reasonably informed observer could still perceive apparent bias.
13. The Focus Group was advised that it is for Members to decide whether they would wish to restrict Members in their chosen field and should the Council decide to adopt a more stringent standard whether it would be justified would only be finally determined if a member likely to be affected by such a prohibition challenged the Council's right to do so to allow the Court to make a final determination. However, it was advised that the current position is justifiable notwithstanding the statement made in the guidance note prepared by Trevor Roberts Associates.
14. Accordingly, the Constitution Focus Group advises that it does not believe Standards Committee should amend Protocol 4 of the Constitution as requested in the public representation.

Frank Cain, Deputy Monitoring Officer