

Wiltshire Council

Full Council

26 November 2019

**Proposed Changes to the Constitution: Protocol 4 of the Constitution
(Planning Code of Good Practice)**

Summary

This report sets out proposed changes to Protocol 4 of the Constitution, following reconsideration by the Standards Committee.

Proposals

That Full Council approve the proposed changes to Protocol 4 of the Constitution.

Reason for Proposals

To ensure the council's constitution is up to date, clear and effective.

Ian Gibbons, Monitoring Officer

Wiltshire Council

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Proposed Changes to the Constitution: Protocol 4 of the Constitution (Planning Code of Good Practice)

Purpose of Report

1. This report asks Full Council to consider recommendations of the Standards Committee in relation to Protocol 4 of the Constitution (Planning Code of Good Practice).

Background

2. The Standards Committee has responsibility for oversight of the Council's constitution. It has established a cross party working group, known as the Constitution Focus Group, to advise and assist in carrying out this function
3. Following meetings of the Constitution Focus Group on [5 September 2018](#), [24 May 2019](#) and [14 June 2019](#), the latter two of which the Chairmen of all planning committees were invited along with the relevant Cabinet Member, the Standards Committee at its meeting on [26 June 2019](#) recommended a series of revisions to Protocol 4 of the Constitution.
4. Following a briefing for Members on [2 July 2019](#) the proposals were considered at Full Council on 9 July 2019 ([Report](#), [Schedule of Changes](#), [Webcast](#) and [Minutes](#)). Following debate, the Protocol was referred back to Standards Committee for reconsideration.
5. Concerns raised in debate focused primarily upon restrictions on how long local Members could speak at Committee, the requirement to require planning reasons when calling-in an application, the timescales for call-in and paragraph 12.6 of the revised Protocol, which relates to call-in of applications by a neighbouring Member against the wishes of the local Member.
6. All Members were emailed on 29 July 2019, 9 August 2019 and 28 August 2019 requesting details of any concerns in respect of any part of Protocol 4 of the Constitution, to assist the Focus Group on behalf of Standards Committee in reconsidering the proposals.
7. The Focus Group considered the responses received and the concerns raised by Full Council at its meeting on 2 September 2019. The notes of that meeting are attached at **Appendix A**. Further amendments were suggested in relation to Member request for call-in.
8. Standards Committee then considered the amended Protocol 4 at its meeting on 14 November 2019. The minutes of that meeting are attached at **Appendix B**.

Main Considerations

9. The existing wording of the Protocol in relation to overruling the local members' views on call-in is as follows:

9.3 While there is a strong presumption that the Division Member's views on call in should prevail, if another Member (i.e. one from a neighbouring division which is affected by the development) thinks an application should go to committee and this is contrary to the view of the local Division Member, it will be open to that member to discuss the application with the Chairman of the committee.

Having discussed the application and considered the possible impacts the Chairman will then have the ability to ask for the application to proceed to committee for determination. In the rare event that the application is in the Chairman's own division, the adjoining member can discuss the application with the Director of the service.

10. The proposed revision to this section as previously recommended by the Standards Committee was as follows:

12.6 While there is a strong presumption that the Division Member's views on call in should prevail, if another Member (i.e. one from a neighbouring division which is affected by the development) thinks an application should go to committee and this is contrary to the view of the local Division Member, it will be open to that member to discuss the application with the ~~Chairman of the committee~~Head of Development Management.

~~Having discussed the application and considered the possible impacts the Chairman will then have the ability to ask for the application to proceed to committee for determination. In the rare event that the application is in the Chairman's own division, the adjoining member can discuss the application with the Director of the service.~~

11. A concern raised at Full Council was the possibility of officers rejecting the call-in of a local member. In practice, officers are not aware of any examples of a local members' call-in request being rejected. However, the wording of Protocol 4 has no impact upon the requirements of the Scheme of Delegation in respect of call-in.

Legal Position

12. Determining planning applications is a council function which is delegated to the five planning committees and officers. Approximately 96% of applications are determined by officers under delegated powers.
13. Whilst the determination of the merits of a planning application is a Council function and is determined by a collective decision of a committee of the Council or under officer delegated authority based on the Council's functions and responsibilities, the decision whether a matter should be determined by a planning Committee or officer delegated decision making is administrative in nature and related to the day to day operation of the Council and is therefore an executive function actioned by officers overseen by Cabinet.

14. It is not permissible in law to delegate such an administrative, executive function to an individual member and it would not be consistent with the Council's constitution and in particular Part 3D which sets out the scheme of delegation adopted by the Council.
15. The Scheme of Delegation recognises this legal position in Part 3D(4) Para 1.2, by stating '*Divisions Members can request in writing/email that a planning application, or an application for Permission in Principle for Minor Residential Development, within their Division proceed to determination by way of an Area Planning Committee*'.
16. This is not intended to place a barrier before a division member calling-in a planning application to committee, but simply states the legal position that the existing position which has been utilised by members since the establishment of the council in 2009, is that an officer makes the decision to call-in an application, following the request of the division member. The wording of Protocol 4 proposed at Full Council on 9 July 2019 placed no additional obligations on members nor provided additional authority to officers.
17. The core aim of Part 3D referring to Members 'can request' a Call-in is not for officers to control members' right to call in but rather to ensure that any call-in is based on and accompanied by adequate planning reasons. If the call-in is not based on adequate planning reasons and a committee was to overturn officer's decision it may provide a strong ground for a successful legal challenge on the basis that the call in was exercised for non-planning reasons. Any decision by an officer must be exercised reasonably and this is reflected in the following:
- Members considering a call-in are encouraged to speak to planning officers before exercising their right to request a call-in to ensure that as far as possible all the planning considerations for the call-in are identified.
 - Since 2009 no request by a member for call has been refused by officers for other than justified time limitation reasons.

Neighbouring divisions

18. Paragraph 1.2 of Part 3D(4) only permits a call-in request from a member regarding applications '*within their division*'. However, it has been recognised that there are occasions where an application site may be located in one division, but the impacts from that application will disproportionately or entirely impact another division.
19. Paragraph 9.3 of Protocol 4, renumbered as Paragraph 12.6 in the revised document, is intended to explain to Members how they might request an item be determined by committee even if it lies outside their division. As established in preceding paragraphs, the legal position is that officers must exercise the administrative, executive function of determining which items proceed to committee, any member who wishes to see an item outside their division would need to make that request to the appropriate officer. This was why the wording was amended to remove reference to the Chairman and other following text for simplicity, in order to reflect the actual legal position.

20. Under Part 3B para 1.3 of the Constitution, the Director of Economic Development and Planning, and through them the Head of Development Management, may bring to Committee 'Any application where the Director for Economic Development and Planning considers it inappropriate to exercise delegated powers having regard to the public representations received and consultee responses'. This power was used most recently at Northern Area Planning Committee on 7 August 2019.
21. Therefore, although the Scheme of Delegation only explicitly states that Members may request a call-in for matters within their division, any Member may request any item be determined by Committee, and if compelling reasons are given the request may be and is likely to be granted.

Revision

22. Standards Committee considered the legal position, and the concerns expressed by Full Council, and as such agreed proposed amended wording as follows:

*12.6 While there is a strong presumption that the Division Member's ~~views on request for~~ call-in should prevail, if another Member (i.e. one from a neighbouring division which is **materially**-affected by the development) thinks an application should go to committee ~~and this is contrary to the view of the local Division Member~~, it will be open to that member to discuss the application with the ~~Chairman of the committee~~ they can make that request in the same way as a request within their own division .*

23. This wording is consistent with the Scheme of Delegation, is clearer about the neighbouring member being materially affected in order for their request to carry additional weight if there is disagreement, without imposing additional procedures on members who wish to request a call-in of an application.
24. Standards Committee also agreed that all references to call-in of applications should be listed as 'request for call-in'. As noted previously it was accepted that such requests made within the timeframes required by the scheme of delegation, had not been rejected and given the system had been in operation for 10 years this would not be expected to change, however Standards considered there was confusion as to the actual processes as a result of the current wording and therefore has suggested an appropriate change to remove any such risk.

Other comments

25. The Standards Committee noted the successful amendment at Full Council relating to there being no five-minute limit for local members to present their views to the relevant Committee, and that this should be incorporated within the revised document. They also accepted a change to Paragraph 4.3.5 that members withdraw when an item is debated, rather than considered.
26. Other comments had been received regarding members speaking as a member of the public where they have an interest, planning reasons for call-in, and clarity over the need to register interests.

27. The Constitution Focus Group considered all comments and considered that the wording of the document sufficiently addressed the concerns, setting out the members must withdraw in their capacity as a member if they have a disclosable interest but retained speaking rights as a member of the public, that the Scheme of Delegation required planning reasons for call-in but that in any case no call-in requests had been rejected, and that references to material interests clarified that not every communication or discussion with objectors or supporters required a disclosure. Standards Committee accepted that reasoning.
28. In relation to a public query to include wording stating Members must not act as planning agents on an application, even if they were not involved in the decision-making process, the Standards Committee did not consider that such a blanket provision restricting Members' employment was appropriate or proportionate.
29. The Protocol numbering and formatting, if approved, would be made consistent with other sections of the Constitution.

Proposal

30. That Protocol 4 be amended by Full Council as detailed at **Appendix C**.

Ian Gibbons, Monitoring Officer

Report Author: Kieran Elliott, Senior Democratic Services Officer, 01225 718504,
kieran.elliott@wiltshire.gov.uk

Appendices

Appendix A – Notes of the Constitution Focus Group meeting on 2 September 2019

Appendix B – Minutes of the Standards Committee 14 November 2019

Appendix C – Revised Protocol 4

Background Papers

None