

## **Ashford Borough Council: Selection and Constitutional Review Committee**

Minutes of a Virtual Meeting of the Selection and Constitutional Review Committee held on Microsoft Teams on the **1<sup>st</sup> October 2020**.

### **Present:**

Cllr. Bartlett (Vice-Chairman in the Chair);

Cllrs. Barrett, Clokie, Farrell, Feacey, Harman, Ledger, Ovenden, C Suddards, Wright.

In accordance with Procedure Rule 1.2 (c) Councillors Ledger and C Suddards attended as Substitute Members for Councillors Hayward and Chilton respectively.

### **Apologies:**

Cllrs. Chilton, Clarkson, Hayward, Howard-Smith.

### **Also Present:**

Cllrs. Burgess, Shorter.

### **In Attendance:**

Head of Planning and Development, Principal Solicitor (Strategic Development), Environmental Protection and Licensing Team Leader, Member Services Manager (Operational).

## **94 Minutes**

Councillor Barrett referred to his appointment as a Liaison Member with the Singleton Spaces Trust which appeared to have been removed from the list of Outside Body appointments. The Member Services Manager (Operational) agreed to investigate and add this back on to the list.

### **Resolved:**

**That the Minutes of the Meeting of this Committee held on the 30<sup>th</sup> June 2020 be approved and confirmed as a correct record.**

## **95 Proposed Changes to the Scheme of Delegations to Officers Regarding Planning and Development Decisions**

The report sought changes to the Scheme of Delegations to Officers regarding Planning and Development decisions. This related to: - retaining the delegations granted under urgency powers at the start of the coronavirus crisis in relation to Reserved Matters applications, Section 73 applications, and Tree Preservation Orders; extending the

scope of existing delegations in relation to major planning applications; and adding the Head of Planning and Development to all of the delegations related to the Planning and Development Service.

A revised version of the Appendix to the report (to which the recommended amendments referred) had been circulated the previous day and was referred to by the Principal Solicitor (Strategic Development).

In accordance with Procedure Rule 9.3, Mr Ransley, a local resident and Kingsnorth Parish Councillor, had registered to speak on this item. His speech was read to the Committee by the Member Services Manager (Operational) and this is attached to these Minutes at Appendix A.

In response to the public speaker, the Principal Solicitor (Strategic Development) advised that the points made around the use of the word “can” rather than “must” had perhaps resulted from the way he had written Paragraph 3(A) of the report. This was not a direct quote from the Constitution, it was a summary of complex legalistic provisions for Members’ benefit. To clarify, it was a matter of judgement for the relevant Planning Officers mentioned, whether an application was “sensitive” such that it should be decided by the Planning Committee. The test was not that it was purely “sensitive”, but that it was sensitive when viewed in the round and, if that was the case, their delegation was suspended and they were not able to determine it, so it effectively became a “must” at that point and it must be reported to the Committee. So the way the Constitution worked did deliver what Mr Ransley was asking for, and there was thus no need to amend the recommendation.

Members then discussed the report and the following responses were given to questions/comments: -

- The importance of Ward Members working closely with their Parish Councils in order to get relevant applications elevated to the Planning Committee was emphasised. It was also emphasised that the proposals in no way fettered the rights of Ward Members to call any Planning applications to the Committee.
- There were a myriad of National Planning Policy Framework (NPPF) and Local Plan policies to recognise the green agenda when determining planning applications, and Officers would be reminded of the importance of utilising these.
- Some Members expressed concerns over the threshold of up to 2.5 hectares for the site area of a delegated housing application where there was no indication of how many dwellings were to be included, and wondered if this should be reduced to 1.25 hectares. There were also some concerns about major applications up to 50 housing units being delegated because, depending on location, these could be very significant developments. It was reiterated that the proposed delegation would allow such applications to be refused without a report to the Committee, and also regardless of the new thresholds, any Planning application could still be called to Committee by a Ward Member if they deemed it appropriate.
- The existing arrangement for consulting with Committee Members on certain applications to be decided under delegated powers would be extended to the new

delegations described in Paragraph 18 of, and the revised Appendix to, the report. This procedure gave the Committee Members the opportunity to decide if they wanted the Committee to consider the application or not and if six or more Members wanted it to go to Committee, it would.

- In response to general comments about the backlog of major applications and whether this was a consequence of the Planning Committee process, or of resourcing in the Planning Team, it was confirmed that the backlog was recognised and had been highlighted in the recent Planning Advisory Service review. It was vitally important to avoid designation and potentially lose the right to determine major applications. The main reason for the backlog was the fact that so few major applications were decided in Planning Committee meetings. There was also not a simple solution of increasing the number of Planning Committee meetings because these still had to be properly resourced and an increase in meetings would not necessarily lead to more applications being dealt with in a more timely or efficient fashion. On resourcing, it was recognised that there had been significant problems with recruiting good quality Planning Officers to Ashford. It did not appear to be an issue of location or finances, but unfortunately those individuals had not appeared to be out there in the market. There were still vacancies where recruitment continued to be pursued and it was hoped they may be more successful this time around to help alleviate some of the current problems.
- There was a recognition that there were occasions when applications were called to Committee by Ward Members which would have been better discussed informally between Members and Officers to seek clarity or a resolution, or where applications were called in and the Ward Member did not then appear at Planning Committee to make their case, and these instances were extremely frustrating. These were perhaps issues that needed further consideration within Groups, or with the Chairman of the Committee.
- Whilst Ward Members could not refer a TPO confirmation to the Planning Committee, the Portfolio Holder for Planning and Development could, and he confirmed that he would be receptive to supporting Ward Members with these where appropriate.
- It was confirmed that, if approved, the new arrangements would come into effect for both existing and new applications, following the Full Council meeting on the 15<sup>th</sup> October 2020. If existing applications had already been called in, this would not affect those and they would remain called in unless the call-in was withdrawn. The Head of Planning and Development advised that the Ward Members would be notified before existing applications were determined under the new delegated powers.

The Portfolio Holder for Planning and Development spoke to formally record that he supported the report and the recommendations within it.

**Recommended:**

- That (i) the increased delegations to Officers described in Paragraphs 13, 18-20 (as amended by the revised Appendix) and 23 of the report, be agreed.
- (ii) the clarifications to the Member Call-in safeguards as described in Paragraphs 16 and 21 of the report be agreed.

## **96 Constitutional Amendment – Pavement Licensing**

The report recommended an amendment to the Responsibility for Functions in the Constitution (Delegations to the Community Safety and Wellbeing Manager(s)), in order to make specific written reference to the new Pavement Licensing regime.

**Recommended:**

**That the changes to the Constitution as set out in Paragraph 4 of the report be approved.**

## **97 Update to Appointments to Committees and Outside Bodies**

The report advised the Committee of a small number of updates to the appointments reported to this Committee on the 30<sup>th</sup> June 2020, and subsequently ratified at the Annual Meeting of the Council on the 16<sup>th</sup> July 2020. These appointments were made following the passing of Councillor Alex Ward.

**Resolved:**

**That the following appointments be noted and approved: -**

- **Appeals Committee – Cllr Anckorn**
- **Joint Transportation Board – Cllr Spain**
- **Ashford Almshouses and Parochial Charities – Cllr Lyn Suddards.**

## APPENDIX A

To Members,

Thank you for allowing me to speak. I hope members are not minded to delegate so much and in particular disagree with the existing delegations of reserved matters on major sites. If you are minded to delegate then I would highlight: -

Under the Urgency measures one of the safeguards is as below-

*'(A) the Strategic Development and Delivery Manager or the Development Management Manager can report to Committee any application or TPO confirmation that they consider to be sensitive such that it **should** be decided by the Committee'*

I would hope that members will seek clarity on what is necessary for the hurdle of '**should**' to be met. As an example the Reserved Matters application at Parcel R in Chilmington Green, which was determined under these powers, received objection from both Great Chart Parish Council (the host Parish), Kingsnorth Parish Council (the immediately adjacent Parish and downstream) and the ward member immediately adjacent wished for the application to be called in (as did Kingsnorth Parish). This application resulted in –

- Houses being built on the floodplain
- The ground levels have been raised out of the floodplain but no compensating land has been lowered.
- The application was beyond the scope of the original Outline Permission for Chilmington which conditioned that the Reserved Matters must not exceed the scope of the EIA assessment...That EIA assessment expressly stating numerous times that there would be no built development in Flood Zones 2 and 3...which it now is.

Mr Baker provided a response to some issues with this decision at the time but was unable to forward an explanation of the way officers addressed the floodplain issues at the time. I have taken advice from a Barrister and they still believe that the decision was flawed here as no Reserved Matters application can exceed the scope of the original EIA without updating it.

How was the '**should**' not triggered in this case, it would seem to provide no safeguard at all.

I believe this situation arises as a result of the '**can**' in (A) and would respectfully request that if members are minded to accept the principle of this recommendation it be amended to read-

*'(A) the Strategic Development and Delivery Manager or the Development Management Manager **must** report to Committee any application or TPO confirmation that they consider to be sensitive such that it **should** be decided by the Committee'*

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