

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**8 November 2006**

**Report of the Monitoring Officer**

**Part 2 - Private**

**Matters for Information**

LGA 1972 - Sch 12A Paragraph 5 – Legal advice

**1 AGENDA MANAGEMENT**

- 1.1.1 Under the Council's Rules for the making of decisions by Executive Members, one of the prerequisites for a decision to be taken by an Executive Member is that there has been a written report circulated to all Members prior to the meeting of an Advisory Board or an Area Planning Committee. In the past it has been customary for some reports relating to the disposal of council property, rent reviews, etc., to be the subject of reports to Area Planning Committees before the decision is taken by the Executive. However some other reports, especially those of a more general or strategic nature, have been reported to the Finance and Property Advisory Board.
- 1.1.2 Some members will be aware that this has led to difficulties with the management of agendas, to ensure that consideration of a proposal, for example, to dispose of a parcel of Council-owned land does not give rise to any allegation of pre-determination on the part of members when dealing with a subsequent planning application.
- 1.1.3 In a recent case, the High Court has acknowledged this difficulty. In the case in question, the authority had maintained a clear distinction between the authority's executive functions (the disposal of land) and its regulatory functions (the grant of planning permission). The court held that it was important for local authorities to maintain a clear distinction between executive and regulatory functions and that the authority's decision would have been quashed had they not maintained such a clear distinction.
- 1.1.4 As a result, it will no longer be possible for reports relating to property issues to be submitted to Area Planning Committees: in future these reports will be included in the agenda for the Finance and Property Advisory Board. Local members will continue to be consulted by the Central Services Director before the matter is reported to the Advisory Board.

**1.2 Legal Implications**

- 1.2.1 It is important that the Council comply with its legal duties to avoid the danger of challenge to its decisions.

**1.3 Financial and Value for Money Considerations**

1.3.1 None.

**1.4 Risk Assessment**

1.4.1 Not applicable.

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