

# TONBRIDGE & MALLING BOROUGH COUNCIL

## COUNCIL

24 October 2023

### Report of the Monitoring Officer

#### Part 1- Public

#### Matters For Decision

#### 1 CHANGES TO CONSTITUTION

The report recommends that changes are made to the constitution to (1) update the Committee Procedure Rules and (2) include the Executive/Scrutiny Protocol as an Annex.

#### 1.1 Committee Procedure Rules

- 1.1.1 At a recent meeting of the Area 1 Planning Committee a query arose about the operation of rule 15.25 of the Committee Procedure Rules, which deals with the situation where a Planning Committee is minded to determine a planning application in a way or on grounds which the Director of Planning, Housing and Environmental Health does not consider can be substantiated. Where this situation arises, rule 15.25 provides that the application shall stand adjourned to the next meeting of the committee to enable the Director of Central Services and Monitoring Officer to submit a report on the possibility of costs or compensation being awarded against the Council if the application is determined in that way.
- 1.1.2 The specific query was whether Members of the Committee needed to vote on a proposed motion before the rule was engaged, or did the fact a proposal had been made and seconded fulfil the requirement? In other words, what constitutes a 'minded-to' determination?
- 1.1.3 To avoid any potential for confusion, I have reviewed rule 15.25 of the Committee Procedure Rules at Part 4 of the Constitution.
- 1.1.4 It is proposed that rule 15.25 be amended to read as follows (new wording underlined and in italics): -
- 'If, contrary to a recommendation of the Director of Planning, Housing & Environmental Health, an Area Planning Committee is minded to determine an application in a way or on grounds which the Director does not consider can be substantiated, *a resolution by the committee to make such a determination will be a recommendation only and* the application shall stand adjourned to the next meeting of the committee to enable the Director of Central Services and Monitoring Officer to submit a report on the possibility of costs or compensation

being awarded against the Council in the event that the application is determined in that way.

If the Director of Central Services and Monitoring Officer's report indicates that there is likely to be a risk of significant costs being awarded against the Council at any appeal, or a potential liability to pay compensation, the committee may not determine the application in a manner contrary to the advice set out in the report, and a resolution by the committee to make such a determination will be a recommendation only and the application shall stand adjourned to Council for determination.'

- 1.1.5 The amended wording will require a vote to be taken, but any resolution (i.e. a formal decision taken by means of a vote) to determine an application in a way that the Director of Planning, Housing and Health does not consider can be substantiated will be a recommendation only and the matter shall stand adjourned to the next meeting of the relevant Area Planning Committee to enable the Director of Central Services to submit a costs report. If that report indicates that there is likely to be a risk of significant costs being awarded against the Council at appeal etc then the Committee may not determine the application in a manner contrary to the advice in the report and it shall stand adjourned to Council for determination.

## **1.2 Executive/ Scrutiny Protocol**

- 1.2.1 On 14 September 2023, the Overview and Scrutiny Committee undertook a review of the governance changes introduced in 2021. This included a review of the effectiveness of the Executive/ Scrutiny Protocol.
- 1.2.2 The Committee made several recommendations to the Executive, including 2 relating to the Protocol. The first of these, namely a recommendation that the Protocol be amended to include the LGA (Local Government Association) guidance on the setting of scrutiny work programmes was agreed by Cabinet on 3 October 2023.
- 1.2.3 It was also recommended that the Executive/ Scrutiny Protocol be published to the website as an Annex to the Constitution. This was agreed by Cabinet. Council are therefore invited to approve the inclusion of the Protocol as an Annex to the Constitution. A copy of the Protocol (as amended by Cabinet on 3 October) is attached as **Annex 1**.

## **1.3 Legal Implications**

- 1.3.1 Article 10 of the Constitution sets out the procedure for review and revision of the Constitution. Except in specified circumstances, changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

## **1.4 Financial and Value for Money Considerations**

1.4.1 None.

## **1.5 Risk Assessment**

1.5.1 The changes to the Constitution proposed in this report are intended to clarify the operation of the rules relating to decision making at Area Planning Committees.

## **1.6 Equality Impact Assessment**

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.7 Recommendations**

1.7.1 It is **RECOMMENDED** that the Monitoring Officer be authorised to amend the Constitution as set out at paragraphs 1.1.4 and 1.2.3 above.

Background papers:

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