

Amendments to the Council's Planning Protocol

Meeting	11 November 2021
Report Author	Nicholas Hughes (Committee Services Manager) Iain Livingstone (Planning Applications Manager)
Portfolio Holder	Cllr Ashbee, Leader of the Council
Status	For Recommendation
Classification:	Unrestricted
Key Decision	No
Ward:	All Wards

Executive Summary:

The report outlines a proposed change to the Council's Constitution following the outcome of a Judicial review of a planning permission issued by the Council under delegated authority. The change would mean that any application by or on behalf of Thanet District Council, or on land owned by Thanet District Council, or owned by any company of which Thanet District Council is a party, would be required to be determined by the Council's Planning Committee.

Recommendation(s):

Members agree the specific amendment to the planning protocol to require all planning applications and applications under planning legislation to be reported to the Council's Planning Committee if Thanet District Council own the land to which the application relates, or if a company which the Council is a party to owns the land to which the application relates.

Corporate Implications

Financial and Value for Money

The proposed changes to the Constitution are proposed to resolve an issue raised by the result of the Judicial review, which resulted in planning permission being quashed and the Council paying the claimant's costs. The changes proposed seek to remove the potential for a similar challenge in the future by clarifying the process of determination of application where the Council could be perceived to be the beneficiary of any grant of planning permission. This would reduce the financial risk to the Council of similar claims.

Legal

The proposed change is as a result of the decision of the High Court on the judicial review. As a High Court decision, it carries significant weight and it is recommended that the Council makes the appropriate amendments to its Constitution to take account of the court's decision.

Corporate

The Council's Constitution is a live and evolving document. It is appropriate that various rules and procedures in it should be amended from time to time to reflect both legal decisions and changes in practice and procedure.

Having a clear and up-to-date Constitution helps the Council to display the communities corporate value as it helps officers and members to understand the rules of the Council.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- Environment
- Communities

1.0 Introduction and Background

1.1 The Council's Constitution at Part 3 Section C Paragraph 2.2.1 outlines that individual applications for planning permission will be determined by the Council's Planning Committee where:

a) It is an application which the Director of Housing and Planning or Planning Applications Manager in consultation with the Chairman or Vice Chairman of the Planning Committee, considers to be of significant public interest;

b) It is an application which Council Members have specifically requested to be referred to the Planning Committee in accordance with the requirements of any Member's Call in Procedure from time to time approved by the Council (set out in the Protocol for the Guidance of Planning Committee Members and Officers);

c) The application has been submitted by or on behalf of a Member or an Officer of the Council;

d) It is an application by or on behalf of Thanet District Council;

e) It is an application where the officer is recommending the approval not in accordance with the development plan.

1.2 The report outlines a proposed change to the Council's constitution following the outcome of a Judicial review of a planning permission issued by the Council under delegated authority. This review was listed as R (on the application of) "G" and Thanet District Council and Kentish Projects Limited. The planning application was made by Kentish Projects Limited on land owned by East Kent Opportunities LLP, a partnership of Thanet District Council and Kent County Council.

1.2 In the judicial review, the planning permission reference F/TH/19/0323, for the erection of 23 two storey dwellings and a three storey building accommodating 15 self-contained flats together with associated parking and landscaping on land on the north side of Stirling Way Ramsgate, was quashed. The High court considered that the Council would have benefited from the regeneration that the development of the site would foster, and due to the presence and content of a contract between EKO and the developer, Kentish Projects Limited, the application was considered to fall into the category of being "on behalf of the Council". The view of the high court was that the application should have therefore been determined by the planning committee, and that a fair-minded observer would conclude that there was a real possibility of bias in the Council's consideration of the application. Please note the judge stated that this did not mean there was bias in the determination, but that the appearance of bias was relevant.

2.0 Why amendments to the Planning Protocol are needed

2.1 Given the outcome of the judicial review, it is considered appropriate and important to avoid any future issues or concerns about the impression of impartiality of the Council's determination of planning applications when the Council is either the owner of the land (but not the applicant), or is part of a company which owns land. In those instances, any planning application or application made under planning legislation on that type of land should be required to be determined by the Council's Planning Committee. Members should note that the change would not apply to applications on land historically but not currently owned by the Council.

2.2 Officers are confident that this change would resolve an ambiguity in the current wording of the Constitution, whilst demonstrating transparency in decision-making of planning applications where there could be a perception of bias due to the Council's ownership of land or otherwise involvement in the land holding.

3.0 Proposed amendments to the Planning Protocol

3.1 To change Part 3 Section C Paragraph 2.2.1 (d) to insert the words "*or on land*"

owned by Thanet District Council or any company of which Thanet District Council is a party”.

- 3.2 The change would mean that any application by or on behalf of Thanet District Council, or on land owned by Thanet District Council, or owned by any company of which Thanet District Council is a party, would be required to be determined by the Council’s Planning Committee.

4.0 Options

- 4.1 Members could agree the specific amendments to the planning protocol with any amendments as they consider necessary or;
- 4.2 Members could reject the amendments.

5.0 Next Steps

- 5.1 Once agreed by the Constitutional Review Working Party, the amendments would be recommended to Standards for consideration and onward submission to Full Council.
- 5.2 If agreed by Council the amendments will be added to the Council’s Constitution and would become effective from the date of the Full council decision.

Contact Officer: *Iain Livingstone, Planning Applications Manager*
Reporting to: *Bob Porter, Director of Housing and Planning*

Annex List

None

Background Papers

None

Corporate Consultation

Finance: Chris Blundell, Director of Finance

Legal: Estelle Culligan, Director of Law and Democracy