

MATTERS CONSIDERED BY THE CABINET AND/OR OTHER COMMITTEES

PLEASE NOTE: These are extracts from draft minutes and as such are subject to amendment.

a. DEVELOPMENT SERVICES REVIEW

Cabinet (09.04.09)

The Chairman informed Members that the review would be discussed by Environment Select Committee on 14 April 2009 and any recommendations arising from that meeting would be considered by the Cabinet at its meeting on 7 May 2009.

The Community and Planning Services Director stated that the review had been undertaken because the current service had not been performing at a high level, despite recent improvements. The review's aims had been to ensure that decisions were made in a timely fashion, improve customer satisfaction and to move the service into the top 25% of Development Control services nationally.

The Interim Head of Development Services stated that the review had looked at best practice elsewhere and had been undertaken with input from the Legal and Democratic Services teams. He also informed Members that, for the avoidance of doubt, it was proposed that any reference to delegated decision within the DC Protocol would be removed and found solely in the new Scheme of Delegation.

The individual Cabinet Members presented and explained the proposals which they had been responsible for drawing up. In particular, Cabinet Members clarified the following proposals:

- Members would be asked to declare any lobbying they had received at the beginning of Development Control (DC) Committees.
- Members would have 21 days from being notified of an application to call it in for consideration by the DC Committee but must give a planning reason for doing so. The Chairman of the Committee would only become involved on rare occasions if there was disagreement between a member and the Development Control Service as to whether a valid planning reason had been provided. Officers would assist members in drawing up valid planning reasons.
- Where parish/town council made a recommendation which was different from that of the officers, Members would have 7 days to decide whether or not the matter should be heard by the DC Committee, and to provide a written request to DC Committee to consider the application. This was an improvement on the current situation.
- It was proposed that the size of the DC Committee be reduced, to enable business to be conducted more quickly. The procedure and meetings would also be simplified.
- More checks would be put in place before DC reports were sent out, to ensure consistency and accuracy.

Item No. 5

- Site meetings would not continue in their current form as there were concerns that they may be open to challenge. Instead, they would be replaced with a pre-committee site inspection. Where necessary, the Committee would also have the opportunity to request a site visit (at a DC Committee meeting) but this would be for a specific reason, and lobbying and public speaking would not be permitted during the site visit.
- More planning appeals would be conducted in-house, with less reliance on consultants. The review had shown that, in general, this both reduced costs and increased the number of appeals won.

A member of the Cabinet suggested that the footnote on Appendix B be amended to state that in the absence of the Chairman and Vice-Chairman, any two members of the DC Committee could be consulted. The Chairman replied that, if the Chairman and Vice-Chairman were unavailable, then a matter would go before the DC Committee. The Cabinet Member also requested that Appendix C be amended to make clear that each local member would have three minutes to speak.

A non-Cabinet member stated that members needed access to an officer's draft views on an application if they were to decide whether or not it needed to be called-in. The Chairman replied that members could be advised of officers draft/initial views; however, he made it clear that these were the officers' reports and it was not appropriate for members to suggest changes to them.

A non-Cabinet Member asked about the implications for local democracy of changing the arrangements for site meetings. The Chairman stated that the public could still attend the site meetings but there would be no representations made or voting undertaken.

Another non-Cabinet Member questioned the proposed change in Committee size. The Chairman stated that there would be 11 DC Committee members, and 8 substitutes. This would help to reduce issues with Members' availability and would allow local members to step down from the Committee when issue within their area were discussed.

A different non-Cabinet Member was concerned about the impact on the Council's reputation if site meetings were removed. He felt that no action should be taken which reduced the opportunity for public input. The Chairman stated that the changes proposed to site meetings were a necessity, as there were concerns about the openness, fairness and transparency of the current system in light of the opportunity for lobbying. He also stated that many members of the public found the site meeting process confusing and that the Council needed to ensure that its decision making was accessible to the public.

Resolved: That,

(a) Members endorse the findings of the Development Services review; and

(b) Subject to any comments at Environment Select Committee on 14 April 2009 and the next Cabinet meeting on 7 May 2009, that Council be

Item No. 5

recommended to adopt the proposed changes to the operation of the Development Control Committee and the Scheme of Delegation set out in the report.

Environment Select Committee (14.04.09)

The Chairman welcomed Members of Cabinet to the meeting.

The Chairman drew Members' attention to recommendations from the Development Control Members Working Group which had been attached to the agenda. These recommendations were considered along with the report on the Cabinet Review of Development Services.

The Head of Development Services explained that the recommendations of Cabinet were outlined in the report.

The Committee discussed the review and made comments on the following sections:

Member/Officer Relationships

The Leader of the Council explained that training for members of Development Control Committee was proposed to be compulsory for new members of the Committee. An annual training programme would be set out at the beginning of the year for training to take place over the remainder of the year. This training would be optional, but encouraged, and would include Members and Officers. A Member requested that any training sessions be held at times other than before a Development Control Committee meeting.

The Committee emphasised the importance of joint training so that all Members and Officers were aware of requirements.

The Head of Development Services undertook to investigate the practicalities of providing Development Control Committee members with a folder of PPG's and PPS's at the beginning of each year. He did not foresee a problem and felt it would be a helpful part of an overall training package.

It was explained that the proposed satisfaction surveys were intended for members of the public, to obtain their views on the committee process rather than satisfaction with regard to a specific planning application.

ACTION 1 Members requested that the bullet point related to surveys be amended to read 'public satisfaction' instead of 'customer satisfaction'.

The Committee discussed in detail practicalities of declaring lobbying.

ACTION 2 The Committee requested that the words 'where practical' be emphasised with regard to declaration of lobbying material.

Resolved: That Cabinet be recommended;

- a) to note the above actions; and
- b) that joint workshops be held to ensure that all Members and Officers were fully aware of their obligations under the Development Control Members and Officers Protocol.

Delegations

The Leader explained that a requirement to provide relevant planning reasons to justify calling an application to Committee was already in place. Although, in practice it was not always adhered to.

Members were concerned that the proposed delegation arrangements would take away a local Member's right to call an application to Committee.

The Portfolio Holder for Continuous Improvement and Strategic Planning drew Members' attention to Appendix B of the report. The time requirements for calling an application to Committee were proposed to improve. A local Member would have three weeks to call an application in. Following an objection from a parish/town council, the local Member would have a further seven days to consider the item. It was clarified that where there was a question of whether an application should be referred to Committee, and the opinion of the local Members differed from that of the Community and Planning Services Director, only then would the Chairman and/or Vice-Chairman of the Development Control Committee be requested to decide. This was outlined in the foot note of Appendix B.

The Leader assured Members that the default position with regard to the footnote of Appendix B would be referral to Committee.

The Leader felt that it was important to improve the relationship between Members and Officers with regard to appropriate reasons for referral to Committee. He felt that the proposed recommendations would allow Members more time to consider applications.

The Committee discussed in detail appropriate reasons for referring an application to Development Control Committee. It was confirmed that, if in the opinion of the local Member an application was of a major, controversial or sensitive nature, this would be an appropriate reason to refer it to Committee.

In response to Members' concern, the Chairman of the Development Control Committee commented that the proposed recommendation would not stop applications with genuine reasons for referral from being presented to Committee.

ACTION 3 It was requested that the footnote of Appendix B to the report be amended to read '...Chairman and/or Vice-Chairman...'

An amendment to the recommendation of the Development Control Members Working Group was moved and lost.

Resolved: That it be recommended to Cabinet;

- a) to note Action 3 above;
- b) that the proposal for a time limit for referrals be supported as long as such limit was practical;
- c) that referrals should not need to have the approval of the Development Control Committee Chairman; and
- d) that the existing rules for referrals from two or three Member wards be maintained unaltered.

Development Control Committee

Reduction in Committee Membership

The Chairman drew Members' attention to the recommendation to reduce the Development Control Committee membership from 19 to 11.

The Leader explained that the Committee would consist of 11 Members to be drawn from a pool of 19. The intention of this proposal was to allow local Members a chance to speak on an application in their ward without having to declare a conflict of interest.

Members were concerned that reducing the size of the Development Control Committee might appear to give a great deal of power to a small number of Members. They also felt it would reduce the geographical spread of wards represented by a Member on the Development Control Committee.

The Leader noted the Committee's strong concerns regarding reducing the membership and stated that this aspect of the Review would be considered before the next Cabinet/Council meeting.

Site Meeting Procedures

The Leader explained that there were a number of reasons why Cabinet was proposing the change to site meeting procedures. It was felt there may be times when a site visit before the meeting would be useful. The Cabinet also felt that the current site meeting system was not equitable to members of the public as it allowed additional representations to be made only to applications which were called to a site meeting. There was no intention to prohibit members of the public from attending site visits. The intention was to create a fairer, clearer system where specific issues would be considered in advance of the meeting and the debate would take place in the Development Control Committee meeting with all Committee Members present.

In response to a query, the Leader advised that the Development Control Committee might already find itself in a questionable situation in relation to whether Members should vote on applications when they had not been present at the site meeting. He explained that the site meeting procedure at Sevenoaks District Council was unique and may possibly lead to difficulties in the event the Council was challenged. Some of these difficulties were outlined in para. 15 of the report.

Item No. 5

The Head of Development Services commented that it was important that the site visits were open to all Members to attend. The practice at other authorities and intention of the proposal was to, where relevant, have site visits before the meeting to consider specific issues. Should an application not go to a site visit, there would still be an option to hold a site meeting.

Members were concerned that the proposals would appear to stifle public involvement. The Leader responded that the current system was not clear to the public and it was important to achieve a regularised system where only matters of fact were considered on site and debate only at Committee meetings.

Members expressed dissatisfaction with the proposed system. They did not feel that the current system was unfair or inequitable and questioned whether two types of site visit arrangements were necessary.

The Development Services Manager added that the Council was responsible for the efficient turn around of planning applications. One of the reasons for the proposal was to achieve this turn around period by tackling issues before meetings of the Development Control Committee, thus mitigating the need for further investigation.

The recommendation of the Development Control Members Working Group was moved, seconded, amended and lost.

Resolved: a) That the recommendations of Cabinet for the procedural changes to Development Control Committee site meetings be referred back to Cabinet for further consideration;

b) that Cabinet be requested to assure Members that involvement of local Members with relation to planning applications would not be reduced; and

c) that Cabinet be asked to note the Committee's concerns with regard to the removal of the Vice-Chairman's role at Development Control Committee.

The Leader advised that a three-week committee schedule would only be discussed once all other recommendations had been considered.

Planning Appeals

Resolved: That Cabinet be advised that the Environment Select Committee supports the recommendations of Cabinet with regard to planning appeals.

Recruitment

Resolved: That Cabinet be advised that the Environment Select Committee supported the recommendations of Cabinet with regard to recruitment.

Consultants

The Development Control Members Working Group had felt that the proposals were welcome, subject to the ongoing need to employ specialist consultants where appropriate. In particular the Group had pointed to the necessary use of highways/traffic consultants previously recommended by the Environment Select

Item No. 5

Committee, when it had been felt that responses from Kent Highways had been inadequate.

The Leader recognised these comments.

The Leader assured the Committee that Cabinet would take on board all comments made regarding the Review.

Cabinet (11.06.09)

Members discussed the proposed amendments to the scheme of delegation. The Chairman of the Environment Select Committee was concerned that Officers might not always know when a matter would be sensitive or controversial and that the proposed changes might lead to conflict between Members and Officers.

Members of the Cabinet expressed the contrary view that the proposed amendments would give Members more time to call a matter to Committee and that Members could inform Officers of matters which were likely to be controversial. They also felt that it was very unlikely that a Member would not be able to call a matter to the Committee, because Members simply needed to cite a planning reason to refer the application to Committee. It was also noted that Members would be able to call a matter to Committee at an early stage as a precaution and would be able to withdraw it at a later stage if they wished.

There was also a discussion on the proposed amendments to the speaking rules for local Members. The Chairman of the Environment Select Committee stated that, whilst he agreed with limiting local Members to 4 minutes, he was concerned that local Members would no longer be able to “wind up” the debate. He stated that the Committee often needed access to the local knowledge of the Member concerned. However, he informed Members that he had no objection to preventing Members of the Committee who were acting as local Members from voting on an application.

The Legal Services Manager advised Members that the issue of parity was very important and reminded Members of the requirements of natural justice. He advised them that an applicant would feel it unfair if a local member, who was speaking against an application, had the opportunity to wrap up the debate and there was no opportunity for the applicant to respond. He also referred to recent Local Government Association advice which supported this position. The Chairman of the Cabinet agreed with this advice and felt it was particularly relevant where there were three local Members present. Other Members of the Cabinet also agreed with this position.

Members also fully discussed the proposal to move away from site meetings and replace them with site inspections. The Chairman of the Environment Select Committee stated that his Committee were against this proposal, because they felt it would be seen as anti-democratic. He felt that many of the concerns expressed about the current running of site meetings could be resolved by a strong Chairman. The Vice-Chairman of the Environment Select Committee also stated that, in his view, the current site meeting arrangements were fair.

The Legal Services Manager advised Members that the issue of parity was also crucial to site meetings. He informed Members of recent Local Government

Item No. 5

Association guidance which advised Councils that visits to an application site should not be used as an opportunity for further lobbying. He also stated that the purpose of visiting a site was to visualise issues that could not be appreciated on paper, rather than to hear representations.

Members of the Cabinet strongly agreed with this position; and noted that Planning Inspectors did conduct their site visits in a similar way, to that being proposed by Cabinet, when they visited sites. A Cabinet Member reminded other Members that these were quasi-judicial meetings and drew a parallel with site visits made by juries in criminal trials. She stated that site visits by juries had the sole purpose of allowing a jury to see the site; there would be no representations taken during the visit.

ACTION 2 Members requested that in para. 3.6 of Appendix E, the numbering should be amended so that (c), (d) and (e) would become (b) (i), (b) (ii) and (b) (iii) and that the other numbering be amended to follow in sequence.

There was a discussion as to whether Officers should introduce planning applications. The Chairman of the Environment Select Committee felt that this would lengthen meetings. However, the Chairman of Cabinet expressed the contrary view that most Members would find the introductions helpful and that they were likely to shorten meetings by clearing up issues more quickly.

The Chairman of the Cabinet thanked Officers for their help in preparing the review.

Resolved: a) That the findings and recommendations of the Development Services review be approved;

b) that Full Council be recommended to approve the proposed changes to the operation of the Development Control Committee and the Scheme of Delegation and related formal procedures set out in the report; and

c) that the Portfolio Holder for the Built Environment be authorised to approve further changes to the Council's procedures related to the Development Services Review, including the Development Control Protocol, which are to be recommended to Full Council for adoption.

Environment Select Committee (18.06.09)

Members were asked to refer to the minutes of the Cabinet (11.06.09).

The Development Control Members' Working Group had met following the meeting of Cabinet and produced some suggested recommendations which they proposed be considered by full Council (21.07.09) before any conclusions were reached on the proposals of the Cabinet included in the Cabinet Review of Development Services.

The Committee considered the recommendations of the Working Group and the following comments were made:

- A Member felt that site meetings, in their current form, gave local residents a chance to have their say in a more democratic, relaxed atmosphere and that

Item No. 5

abolishing the current procedure for site meetings would exclude residents from giving their views.

- A Member suggested that the site meeting procedure remain as it currently was, but that the voting element be removed, as was the procedure in a neighbouring authority.
- A Member felt that there should be more specific reasons for calling a site meeting.
- It was suggested that the planning officer attending the site meeting bring a digital camera to take photographs of the specific issues which were being considered by the site meeting Members. These could be brought back to the next meeting of the Development Control Committee. The Committee felt this was a good idea.
- A Member felt that an Officer introduction at Committee would unnecessarily prolong the meeting and that this should be time limited. It was suggested that the introduction be limited to the material considerations and the length subject to the Chairman of Development Control Committee's discretion.
- The Chairman felt it was important to try to retain the opportunity for members of the public to be heard.
- Members felt that the relevant parts of the Council's Constitution and the Development Control Officer/Member Protocol should be consistent.

Resolved: That the amended recommendations, attached as an Appendix to these minutes (*see Appendix A*), be agreed and forwarded to full Council (21.07.09) for consideration with the Cabinet Review of Development Services.

Modern Local Government Group (09.07.09)

To follow

b. INVESTMENT STRATEGY REVIEW

Finance Advisory Group (17.06.09)

Members of the Group reviewed and debated the Investment Strategy option. This item will also be considered by the Performance and Governance Committee on 23 June, Cabinet on 9 July and Council on 21 July 2009.

The Principal Accountant advised Members that he had encountered difficulties in finding an institution in which to invest funds, but had reviewed suitable options. Members discussed in detail the most suitable options, stating that not investing in Building Societies with a credit rating below AA- meant that only Nationwide was a suitable candidate.

Item No. 5

If necessary, lending to non-UK (EU) based institutions could be investigated at the next meeting of the Group should there still be problems in funding suitable counterparties. It was noted that lending to such institutions was permitted within the current strategy.

Members were also advised that following an internal audit review, controls over placing investments had been tightened further.

Copies of the latest position were handed to Members and all agreed that the modified strategy should be presented to the Performance and Governance Committee, Cabinet and Full Council.

Resolved:

That it be recommended to Cabinet that the Investment Strategy for 2009/10 be amended as follows:

- a) Reintroduce lending to nationalised and government majority owned banks to a limit of £4m per group (£2m per institution within that group) i.e.,
 - Lloyds Group – Bank of Scotland Plc, Lloyds TSB Bank plc, and Cheltenham and Gloucester
 - Royal Bank of Scotland Group – ABN AMRO Bank NV, National Westminster Bank plc, Royal Bank of Scotland Plc, and Ulster Bank Ltd
 - Northern Rock plc
- b) Increase the Group limit for Santander to £4m (£2m per institution within that group, e.g., Abbey National plc., Alliance & Leicester plc and Bradford and Bingley); and
- c) Not to invest in Building Societies with a credit rating below AA- (the same criteria as for banks).

Performance and Governance Committee (23.06.09)

The Head of Finance and Human Resources advised that the Investment Strategy was normally reviewed annually. However, there had recently been concerns nationally over the financial stability of building societies. Members' attention was drawn to the notes of the Finance Advisory Group (17.06.09) which included some recommendations for consideration.

Members discussed the recommendations in detail. It was clarified that should Santander amalgamate its subsidiaries, then only £2m could be invested in the one company. If the subsidiaries were kept separate, it was possible to lend £2m to each subsidiary. The Chairman assured Members that Officers were being cautious regarding lending within guidelines set by Members and that the Finance Advisory Group would be keeping a close eye on the situation.

Members questioned the robustness of the credit ratings awarded to banks. The

Item No. 5

Finance Manager explained that the treasury advisors now provided additional information relating to Credit Default Swaps which should help to provide an earlier warning of institutions having financial difficulty.

Members felt that the recommendations put forward by the Finance Advisory Group would improve the Council's ability to lend as they relaxed the current Investment Strategy.

It was explained that there would be financial implications in not lending to building societies. However, these implications needed to be weighed against the risk. Members felt there was a danger of having a lack of institutions to lend to but, that liberalising the current Investment Strategy would give the Council the opportunity to choose appropriate institutions to which to lend.

ACTION 4 The Head of Finance and Human Resources undertook to inform Members of the financial implications of amending the Investment Strategy.

Resolved: a) That it be recommended to Cabinet that the Investment Strategy for 2009/10 be amended to remove unrated building societies from the lending list;

b) that lending to nationalised and government majority owned banks be reintroduced to a limit of £4m per group (£2m per institution within that group) i.e.,

- Lloyds Group – Bank of Scotland Plc, Lloyds TSB Bank plc and Cheltenham and Gloucester;
- Royal Bank of Scotland Group – ABN AMRO Bank NV, National Westminster Bank Plc, Royal Bank of Scotland Plc and Ulster Bank Ltd; and
- Northern Rock Plc;

c) that the group limit for Santander be increased to £4m (£2m per institution within that group, e.g., Abbey National Plc, Alliance and Leicester Plc and Bradford and Bingley); and

d) that no lending take place with building societies with a credit rating of below AA- (the same credit criteria for banks).

Cabinet (09.07.09)

To follow

c. LICENSING COMMITTEE – AMENDMENTS TO THE CONSTITUTION

The Democratic Services Manager explained that the proposed changes to the Licensing Hearing Sub-Committees were intended to strengthen standing orders. He also explained that whilst Members would be responsible for making substitutions,

Item No. 5

Democratic Services Officers would assist Members by maintaining a list of available substitutes and by contacting the selected substitute on the Member's behalf.

Members discussed the suggestion of requiring only two Members for a quorum and felt that the greatest effort should be made to avoid the situation arising. It was therefore agreed to amend the proposals to allow substitutions up to one working hour prior to a scheduled Licensing Hearing.

Resolved: (a) That five Licensing Sub-Committees be appointed, with the membership set out in the report and the terms of reference set out in Appendix A to these minutes;

(b) that the quorum of the Licensing Sub-Committee be amended to two; and

(c) that Council be recommended to amend Part 8 of the Constitution as set out in Appendix A to these minutes (*can be found as the Appendix to Item 6(c) on this agenda*).

d. VARIATION OF PARKING AGENCY AGREEMENT

Cabinet (09.07.09)

To follow

Recommendations from the Environment Select Committee regarding the Review of Development Services

Having noted the Cabinet's response to this Committee's comments at the meeting of 14 April 2009 and considered their revised proposals to be brought to full Council on 21 July 2009, this Committee asks that the following views be noted and considered by full Council before reaching any conclusions on the suitability of the proposals from the Cabinet:

1. This Committee regards the use of Site Meetings in their present form as a valuable contribution to the effectiveness of this Planning Authority in achieving fair, transparent and properly-assessed determination of planning applications by the Development Control Committee. It notes that the existing procedures are (a) practical in arranging for 5 Members of the Committee to visit an application site so as to assess any relevant physical features to determine that application. (b) fair and transparent in making it possible for local Members, Town or Parish Councils and local residents to make their views clear and for applicants and their agents to explain their proposals, with the site itself to demonstrate all points. (c) similar to those followed in various other Planning Authorities in Kent and elsewhere with similarly satisfactory results.
2. This Committee considers that the proposed substitution of 'site visits' or 'site inspections' in place of site meetings would reduce the transparency of the process, cause the input of town or parish councils and local residents to be severely curtailed and would seriously damage the reputation of this Council as a Planning Authority.
3. This Committee is of the view that, if properly guided by the Chairman, the existing format of site meetings can be seen to be fair and beyond reproach. The existing procedures have been examined against the advice set out in the latest LGA guidance note 'Probity in Planning' and found to be in conformity with the principles expressed therein.
4. It is therefore the advice of this Committee that proposals to end the existing form of Site Meeting should be abandoned
5. It is considered that the site meeting Members need not actually make a recommendation to Committee, but that a report by the Chairman, supported by careful Minutes may be sufficient, enhanced by photos taken on site by digital camera by the officer present at the instructions of any Members of the site meeting to illustrate aspects they regard as necessary.
6. With regard to the proposed changes in procedures at Development Control meetings, this Committee is strongly opposed to the elimination of the right of Local Members to reply to a debate. This would reduce the opportunity for individual Members to fulfil their obligations to their electors. It is accepted that a general limit of 4 minutes for their opening contribution should normally

Item No. 5

APPENDIX A

be sufficient, subject to any necessary extension at the discretion of the Chairman.

7. This Committee notes the proposal for an Officer introduction to the debate but recommends, whenever this is felt necessary, that it should be no more than a brief summary of the salient points of an application, immediately after the Chairman has introduced the item.
8. The Committee does not feel that 'customer' is an appropriate term to describe those who rely on our planning services and believes that our nomenclature should be based on real local circumstances rather than national indicators. When we provide planning services we have a statutory duty to provide them to all members of the public in the same way that they are obliged to come to us for those services. The word 'customer' is thus inaccurate and inappropriate and 'public' would be far more suitable.
9. In Appendix C there is an exception to the Officers delegation powers 'for applications of a significant, controversial or sensitive nature'. The Committee suggests that as Local Members are more likely than anyone else to know whether these criteria are appropriate it would be wise to insert 'on the advice of Local Member(s)'.
10. The Committee are not happy that it is proposed to give the Portfolio Holder responsibility for any modification to the Development Control Member/Officer Protocol. This Committee proposes that any such amendments should first of all be submitted by Officers to this Committee, who would then as previously make any adjustments necessary before consideration by Modern Local Government Steering Group prior to presentation to full Council.