

Dear City Solicitor

Please find enclosed a Call In relating to the decision taken by the Cabinet Member for Planning Policy and City Development on 26<sup>th</sup> July 2022, Minute item 4 relating to Options for increasing Planning Committee Capacity

The Cabinet Member resolved that the scheme of delegation for planning decision making be amended by:

1. The deletion of paragraph 53 of Part 2 Section 5B (Director of Regeneration) of the constitution; and
2. The amendment of paragraph 57 of Part 2 Section 5B (Director of Regeneration) of the constitution so that the threshold applied to a requirement for Committee determination is where six or more adverse representations based on material planning considerations have been received

### **Reason for Call In**

This decision seeks to amend the constitution of Portsmouth City Council and has been based on inaccurate/incorrect legal advice in that it is in breach of **Chapter 4 – Role of the City Council**

In addition, this decision also fails to consider a previous report to the Cabinet Member for Planning Policy and City Development on 16<sup>th</sup> September 2021 at which similar recommendations to make changes to the Constitution were referred to the Governance, Audit and Standards committee and therefore the decision may have been taken without adequate information.

**Section 4.1. General reservation of powers to the city council**, details those decisions on which matters are reserved to the city council, this includes

**2. Adopting material changes to the constitution (including standing orders)**

**On 16<sup>th</sup> September 2021 Similar Changes were submitted to the Cabinet Member for Planning Policy and City Development in that**

2. Recommendations

2.1 To approve the reintroduction of amendments to paragraph 53 of the Scheme of Delegation to increase the scale threshold of applications that are reserved for Committee approval from 6 or more dwellings to 10 or more dwellings.

2.2 To approve the amendment of paragraph 57 of the Scheme of Delegation to raise the threshold for the number of adverse representations needed to require committee consideration from 1 (one) to 3 (three) and remove the requirement for objectors to also request to attend the meeting as a deputation.

## Appendix 2

2.3 To approve the amendment of paragraph 50, 53, 54 and 57 of the Scheme of Delegation to include the exception for applications for certificates of lawfulness or applications for Prior Notifications or Approvals.

At that meeting Cllr Hugh Mason took note of the legal advice detailed in the report in that

*"The Council's constitution describes the processes by which planning applications are considered. It is regularly reviewed to ensure it promotes efficiency and upholds the principles of good and transparent public decision making"*

Cllr Mason also considered deputations which raised concerns with the second recommendation to amend paragraph 57 of the Scheme of Delegation to raise the threshold for the number of adverse representations needed to require committee consideration from one to three and remove the requirement for objectors to also request to attend the meeting as a deputation.

This was felt to be a constitutional change that removed rights from residents and required further debate amongst members. In light of the concerns raised

Cllr Mason agreed at that meeting to refer the second recommendation in respect of amendments to paragraph 57 of the Scheme of Delegation to the Governance & Audit & Standards Committee and proceed only with the first recommendation to amend paragraph 53. Cllr Mason also agreed the third recommendation, albeit amended to remove references to the recommendation to amend paragraph 57

**This decision should be called in to Scrutiny Management for consideration and should the committee uphold the call in, referred back to the Cabinet Member for Planning and City Policy with recommendations referring the scheme of delegations to the Governance, Audit and Standards committee for determination.**

## Chapter 4 – Role of the City Council

### 4.1. General reservation of powers to the city council

(11/2019)

Decisions on any of the following matters are reserved to the city council –

1. Setting the level of council tax or other form(s) of local taxation, and approving the budget (including the housing revenue account);

**2. Adopting material changes to the constitution (including standing orders);**

3. Unless otherwise provided, the appointment, powers, duties and composition of the Cabinet, Panels, and committees;

4. Agreeing and adopting the following plans and strategies (the Policy Framework):

- a) as required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and regulations under section 32 of the Local Government Act 2000 –
  - i. Annual Libraries Update Report;
  - ii. Best value performance plan;
  - iii. Children’s and young people’s plan\*;
  - iv. Community strategy;
  - v. Crime and disorder reduction strategy;
  - vi. Local transport plan;
  - vii. Plans and strategies which together comprise the Town and Country Planning development plan;
  - viii. Youth justice plan.

\* This includes the education of children in the public care, education development plan, early years development plan, childcare plan and school organisation plan

- b) other plans and strategies which the council has decided should be adopted by the council meeting as a matter of local choice –
  - i. Integrated health development strategy
  - ii. City cultural strategy
  - iii. City leisure strategy
  - iv. Directorate business plans
  - v. Education inclusion policy and strategy
  - vi. Lifelong learning development plan
  - vii. Community sustainability strategy

## Appendix 2

- viii. Social services delivery and improvement statement
  - ix. Strategy for promoting or improving economic, social and environmental well-being
  - x. Statement of licensing policy
  - xi. Any other plan or strategy agreed to be adopted by the council as a matter of local choice.
  - xii. Food service plan
  - xiii. The plan and strategy which comprise the housing investment programme
  - xiv. Adult learning plan.
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- c) Housing land transfer:
  - housing land transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under section 32 or 43 of the Housing Act 1985.
5. Matters requiring a special majority or special notice or otherwise requiring by law a decision of the city council;
  6. The promotion of applications and orders under the Transport & Works Act, and harbour revision orders;
  7. The promotion or confirmation of a compulsory purchase order;
  8. Any other matter required by the council's standing orders to be submitted for resolution by the city council, unless the city council has expressly or by necessary inference delegated such matters to a committee or chief officer;
  9. To make decisions on those matters referred to Council by Scrutiny Management Panel;
  10. Making appointments to the Hampshire Fire & Rescue Authority;
  11. Making appointments to the Police and Crime Panel:
  12. Appointing representatives to outside bodies unless the appointment is a Cabinet function;
  13. Adopting a Members Allowances Scheme;
  14. Conferring the title of Honorary Alderman or freedom of the city
  15. Confirming the appointment of the Head of Paid Service;
  16. Confirmation of the appointment of the Monitoring Officer;
  17. Confirmation of the appointment of the Council's Chief Finance Officer (s.151 Officer).

## Appendix 2

18. Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal bills;

19. All local choice functions set out in Part 2 of this Constitution which the council decides should be undertaken by itself rather than the Cabinet;

53 : Any applications which are recommended for approval and that seek planning permission for 1,000 square metres or more of new non-residential floor area or for six\* or more new dwellings \*(Temporary adjustment from six to ten or more dwellings, which expires on 13 February 2021)

57 : Any applications which are recommended for approval where three adverse representations based on material planning considerations have been received, except in the case of applications for certificates of lawfulness or applications for Prior Notifications or Approvals.

Deleting Para 53 and amending Para 57 to change the threshold from three adverse representations to six are both material changes to the constitution and would fall under Chapter 4 of the Constitution section 2 (Role of the City Council) whereby decisions on any of the following matters are reserved to the city council – Section 2 states Adopting material changes to the constitution (including standing orders)