

SCRUTINY MANAGEMENT PANEL

Minutes of the meeting of the Scrutiny Management Panel held on Tuesday, 27 September 2022 at 2.30 pm at the Civic Offices, Portsmouth

Present

Councillor Matthew Atkins (in the Chair)

Councillors Graham Heaney
Stuart Brown
Mark Jeffery
Leo Madden
Scott Payter-Harris
Gemma New

5. Apologies for Absence (AI 1)

Apologies had been received from Cllr Dave Ashmore and Cllr Cal Corkery. Cllr Judith Smyth was present as Standing Deputy for Cllr Corkery.

6. Declarations of Members' Interests (AI 2)

Whilst not an interest, for transparency, Cllr Judith Smyth stated that she was an opposition spokesperson for the Cabinet Member for Planning Policy & City Development and the Chair of the Planning Committee.

7. Decision taken by the Cabinet Member for Planning Policy & City Development on 26 July 2022 in respect of item 4 on that agenda "Options for increasing Planning Committee Capacity."- Call-in (AI 3)

The Chair explained that five members of the Council, Ryan Brent, Benedict Swann, Lee Mason, Lewis Gosling and Daniel Wemyss had asked for the decision taken by Cabinet Member for Planning Policy & City Development on 26 July 2022 in respect of item 4 on that agenda 'Options for increasing Planning Committee Capacity' be called in for scrutiny.

The call-in request had been made on two grounds:

- They believed that the decision may have been based on inaccurate or incorrect information; and
- They believed that the decision may have been taken without adequate information.

A call-in on the grounds of 'believe the decision may have been taken without adequate information' had been ruled valid by the City Solicitor.

The Chair advised that if the panel was satisfied that the decision had not been taken without adequate information being supplied to enable the Cabinet Member to reach his decision, then no further action was required.

If the panel was not satisfied on these grounds, it could refer the matter back to the Cabinet Member setting out in writing the nature of its concerns that are to be addressed in conjunction with the original matter.

The Chair advised that no written deputations had been received.

Councillor Brent, the lead call-in member, outlined the reasons for the call-in (set out in full on the Call-in form at Appendices 1 and 2.)

The call-in councillors believed that the decision made by Cabinet Member for Planning Policy & City Development to delete Paragraph 53 and amend Paragraph 57 of the scheme of delegation for planning decision making were both material changes to the constitution and therefore outside of the remit of the Cabinet Member to change. Whilst the rationale for the decision was understood, it was believed that inadequate legal advice within the report resulted in the cabinet member making a decision outside of his power.

In response to questions, Cllr Brent did not believe that the legal advice had been incorrect. It was the view of the call-in members that it had been inadequate, due to the context of the previous decision having been referred to the Governance & Audit & Standards Committee first not being referenced. The decision making process had not followed recent precedent, in that the decisions to materially change the constitution had been taken without first seeking the views of the Governance & Audit & Standards Committee.

In reply to a question about the adequacy of the legal comments the City Solicitor explained that whilst the legal comments could have been more fulsome, the context of the previous process had been contained within the body of the report.

The Chair of the panel highlighted that there was some debate about who had the authority to amend the scheme of delegation for planning decision making and the process was not clearly defined. It appeared that the Cabinet Member had however agreed changes without either following or being aware of the process adopted previously.

Cllr Lee Hunt, Cabinet Member for Planning Policy & City Development, gave his response.

Cllr Hunt explained that he had been fully aware that the previous decision had been made following a referral to the Governance & Audit & Standards Committee and drew the panel's attention to para 3.2 of the report he had considered which detailed that this had happened.

Cllr Hunt gave the context of the decision, which was his priority to reduce the backlog in the determination of planning applications and the associated delays to applicants. This had been impacted by many factors, including the Covid 19 pandemic, nutrient neutrality and the national issue of staffing for planning authorities.

When he was Chairman of the Planning Committee he had increased the frequency of Planning Committee meetings from every four weeks to every three. The report which he had considered on 26 July 2022 had included an option to increase the frequency further, however there was a significant cost associated with this for which there was no funding available.

The other option he had considered and agreed was to increase the threshold for the number of objectors required for an application to require Planning Committee determination. He had also received a representation from another member to consider increasing the threshold for members' ability to refer a planning application for Planning Committee determination from one member to three members. He did not wish to fetter members' ability to do this and therefore did not amend this part of the scheme of delegation.

In making his decision he had been very mindful of the route that the previous decision had taken but noted that it had been referred by choice to the Governance & Audit & Standards Committee by the cabinet member who had subsequently made the decision.

Given the priority of reducing the backlog of planning applications he had been mindful of the precedent that it had been the cabinet member who had made the previous decision to amend the scheme of delegation. To avoid delay he had decided to take the decision on 26 July without referring to the Governance & Audit & Standards Committee first.

In response to questions from the panel Cllr Hunt confirmed that he had been adequately briefed in advance of taking the decision and knew that previously the cabinet member had made a similar decision. He had not followed the previous process of referring the matter to the Governance & Audit & Standards Committee first as the decision was for the cabinet member to make and he did not want to delay the matter. It had been the previous cabinet member's choice to refer the matter to Governance & Audit & Standards Committee prior to making the decision. Cllr Hunt confirmed that had not consulted with the current Chair of the Planning Committee directly as she was an opposition spokesperson to his portfolio.

In response to a point made that the Planning Committee had been informally consulted prior to the previous decision being made, Cllr Hunt replied that he had not been aware of this. He had however been aware of all of the issues, the process for decision making used previously and he felt that he had sufficient information with which to make a proportionate and reasonable decision. He also advised that opposition spokespersons had been briefed in advance and that no issues with the process had been raised at that point, or during the meeting at which the decision had been made.

In response to a question the City Solicitor advised that constitutional changes were within the remit of either the Governance & Audit & Standards Committee or the City Solicitor's limited delegations. He reminded members that the Governance & Audit & Standards Committee had agreed some quite substantial changes to the constitution and whilst the process in this instance

was not clearly defined, he believed that consideration of the matter by the Governance & Audit & Standards Committee would be a pragmatic solution.

The Chair asked where in the constitution it stated that the cabinet member had the authority to change the scheme of delegation in respect of planning decision making. Cllr Hunt replied that he had followed the same process as the previous decision in that the decision had ultimately been made by the cabinet member. Prior to the meeting there had been a number of conversations and briefings and the view was that he was entitled to make the decision.

There being no further questions, Cllr Brent summed up the case on behalf of the call-in councillors. In doing so he expressed some concerns that the cabinet member felt that he was entitled to make the decision and stressed the importance of the correct procedure being followed. Whilst a side issue, he was worried about the comments made by the cabinet member that the decision made would reduce the planning backlog by half, as this was not a guarantee. He acknowledged that the report stated the previous process in that the previous cabinet member had referred the matter to the Governance & Audit & Standards Committee but what was missing was the explicit legal implication that occurred in the previous decision.

He was also concerned that the cabinet member wasn't aware of what the Governance & Audit & Scrutiny Committee had said in respect of the previous report or that the Planning Committee had been consulted previously.

He also reminded the panel that there was a second option to increase the number of Planning Committee meetings, should the decision be reconsidered.

Cllr Hunt, the Cabinet member summed up his response to the call-in.

Cllr Hunt explained that he wanted to arrive at a decision which halved the backlog of planning applications and he believed that the officers had produced a good report which contained all of the necessary information.

He hoped that the Scrutiny Management Panel didn't refer the matter elsewhere and add additional delay to reducing the backlog of planning applications and reiterated that he had full knowledge of the route that the previous decision had taken in respect of being considered by the Governance & Audit & Standards Committee.

During debate the panel had mixed opinions about whether to uphold the call-in. Whilst members of the panel were broadly supportive of the decision and acknowledged the need to reduce the backlog of planning applications awaiting determination, concerns were raised about the procedural correctness in the way that the decision had been taken.

Members of the panel made the following comments:

- Requested that further consideration be made to increasing the threshold of the number of members required for a planning application to be considered by the Planning Committee.
- Believed it would be beneficial to find out what the public thought about the proposals contained within the report.
- Requested that the Constitution Working Group look at the matter, as there appeared to be a lack of clarity currently in respect of the correct decision making process and the remit of cabinet members. It was believed that Full Council having to agree such changes would be restricting.
- Believed that the decision had been based on inadequate information and that the Cabinet Member had failed to properly take into account the constitutional implications of the decision.
- Believed that the matter should also be referred to the Governance & Audit & Standards Committee for consideration, with its findings reported back to the cabinet member prior to the decision being made.

In terms of what the panel could resolve, the City Solicitor advised that the panel could either:

- Not uphold the reasons for the call. No further action would be taken and the decision would be effective immediately; or
- Uphold the reasons for the call-in and refer back to the cabinet member for reconsideration, setting out in writing the nature of its concerns that are to be addressed in conjunction with the original matter.

it was
proposed by Councillor Judith Symes
and seconded by Councillor Graham Heaney

That no further action be taken.

Following a vote, four members of the Scrutiny Management Panel voted in favour of this proposal and four voted against. The Chair used his casting vote to vote against the proposal and the proposal was therefore declared LOST.

it was
proposed by Councillor Matthew Atkins
and seconded by Councillor Scott Payter-Harris

that the reasons for the Call-in are upheld by the Scrutiny Management Panel and it therefore refers the matter back to the Cabinet Member for reconsideration as it believed that the decision may have been taken without adequate information and that the Cabinet Member may have failed to properly take into account the constitutional implications of the decision.

Following a vote, four members of the Scrutiny Management Panel voted in favour of this proposal and four voted against. The Chair used his casting

vote to vote for the proposal and the proposal was therefore declared CARRIED.

RESOLVED that the Panel having considered the evidence decided that the reason for the Call-in 'believe the decision may have been taken without adequate information and that the Cabinet Member may have failed to properly take into account the constitutional implications of the decision' is upheld by the Scrutiny Management Panel and it therefore refers the matter back to the Cabinet Member for Planning Policy & City Development for reconsideration.

The meeting concluded at 4.47 pm.

Councillor Matthew Atkins
Chair