

CABINET



| | |
|-------------------|--|
| Report subject | Review of Planning Call-in arrangements within BCP Constitution |
| Meeting date | 12 July 2019 |
| Status | Public Report |
| Executive summary | <p>The Shadow Authority adopted a Constitution for BCP Council at its meeting on 21 February 2019.</p> <p>The Constitution sets out how decisions on planning applications are made, including when they have to be considered by the Planning Committee.</p> <p>It provides for Councillors in their Ward Councillor role to “call-in” certain specified types of applications to be considered by the Planning Committee if the site is within their Ward.</p> <p>Concerns have been raised about these provisions and as a result they have been reviewed. This Report sets out proposals for Cabinet to consider and recommend to Council for approval at the meeting of Full Council on 16 July 2019.</p> |
| Recommendations | <p>It is RECOMMENDED that Cabinet considers the options for change set out in this Report and makes the following recommendations to Full Council:</p> <ol style="list-style-type: none"> 1. Householder applications are within the scope of the planning applications that can be subject to Councillor call in to Committee. 2. The call-in provisions for Planning Applications are extended to include all Councillors, on the same basis as that which applied to Ward Councillors currently, namely that the Councillor should set out why the application is potentially contentious and raises material planning issues which would affect the wider public interest. 3. The period within which Councillors can request a call in is extended and must be made within 30 days of the date the application was registered. <p style="text-align: right;">Continued.</p> |

| | |
|----------------------------|--|
| | <p>4. A Councillor that has called in an application for consideration by Planning Committee may withdraw their request at any time up until seven days before publication of the Agenda for the meeting of the Planning Committee.</p> <p>5. A Councillor may make a conditional request that an application be called in – on the basis that it be called in to be considered by Committee if the officer is proposing to grant/refuse the application, in accordance with the process set out more fully in paragraph 19 below.</p> <p>6. Where a Parish or Town Council, or Neighbourhood Forum, makes a representation which raises material planning issues which would affect the wider public interest in respect of a Planning Application this application is considered by the Planning Committee.</p> <p>7. That the Constitution be amended to reflect and implement the above.</p> |
| Reason for recommendations | To provide further public and democratic engagement with the planning decision making process and ensure that there are greater powers for elected Councillors and community representatives to refer matters to Planning Committee in cases where there is public interest and material planning reasons for debate at the Committee. This is intended to provide further transparency and to reinforce confidence in the planning process. |
| Portfolio Holder(s): | Councillor Margaret Phipps, Portfolio Holder Strategic Planning |
| Corporate Director | Julian Osgathorpe, Corporate Director Resources |
| Contributors | <p>Tanya Coulter, Monitoring Officer and Director, Law & Governance</p> <p>Richard Genge, Development Services Manager, Planning Services</p> |
| Wards | All |
| Classification | For consideration and recommendation to Full Council |

Background

1. On 21 February 2019 the BCP Shadow Authority adopted a Constitution for BCP Council. The Shadow Authority was advised at this time that it was likely the new

Council would wish to review certain parts of the Constitution once elected, and once the implications of the provisions became clearer.

2. It has become clear since the introduction of the call-in arrangements for planning decisions to be considered by Planning Committee that there are provisions that should be reviewed to ensure BCP Council is satisfied with the time limits involved, and the other parameters within which applications can be referred to the Planning Committee.
3. This review relates to the mechanisms for Councillors and other bodies to refer matters to Committee. There are a number of provisions in the Constitution that provide for automatic referral to Committee or Officer referral. The review has not considered these matters.
4. In reviewing options, it is relevant to consider the scale of planning related applications BCP Council will likely consider on an annual basis. In this regard, based on recent trends, BCP Council will, on average, determine 5,000 applications a year, 3000 of which are Planning Applications with the remainder being Tree Works Applications.
5. The existing BCP scheme of delegation was established to service a single planning committee that will meet each month and on average consider around 8-10 applications. Over a year this would be between 96 and 120 applications, which is around 2% of the total number of applications. It was agreed at the time of adoption that the balance between delegated decisions and number of decisions being taken by Committee would need to be considered following the election in May 2019.
6. The existing scheme of delegation was also prepared and adopted to ensure that the most controversial and strategic decisions were considered by the Planning Committee, with all other decisions capable of being determined under delegated powers based upon Council adopted planning policy. Since the adoption of the Constitution many concerns have been raised about the loss of public and Councillor engagement and there is a need to achieve a more appropriate balance in the matters considered by Committee and those decided by professional planning officers using delegated authority.
7. The preceding Councils all had different arrangements for call- in and different mechanisms and schemes of delegation.
8. The issues for consideration are set out below.

Types of Planning Applications which can be called in to Committee

9. Householder applications, being applications to extend or carry out alterations to a dwelling house, are currently excluded from call in unless they are applications made by a Councillor or Senior Officer, where they would be automatically considered by Planning Committee.
10. Householder applications by their nature are likely to affect their immediate neighbours and being more often the only time residents engage with the Planning Service result in both representations to the authority and requests for Ward Member support.
11. If householder applications can be called in to Committee, it is likely this would increase the number of applications being considered by the Committee. This could extend the length of meetings or expand the number. This has to be

balanced against the need for planning decisions to be made openly and transparently in public in cases where there is strong public interest and material planning issues involved, and it is proposed that householder applications are within the scope of the Councillor call in provisions.

Which Councillors can call in a decision to Committee

12. It is currently the position that Councillors can seek to call-in a decision to Committee where the application site is within their Ward. This prevents other Councillors being able to call in applications in adjacent or other Wards in circumstances where the decision could affect that adjacent or other Ward.
13. As noted above the preceding Bournemouth and Poole authorities restricted the call-in to Ward Members, whereas Christchurch enabled call in by any member. This was the subject of some scrutiny in Poole and in acknowledgment that some sites affect the wider interests it was resolved that any Councillor could call-in application beyond their Ward in consultation with the Chairman and Development Services Manager, setting out how the proposal affects issues beyond the relevant Ward boundary.
14. The Current BCP Constitution requires Ward Councillors to set out why 'the application is potentially contentious and raises material planning issues which would affect the wider public interest'. A guide to material planning issues is published on the Council's web site. Ultimately it is a matter for the courts to define what is or is not material, and this can change from time to time. Officers can provide assistance to Councillors in each case. It is proposed to extend the call-in provision to all Councillors rather than limit it to Ward Councillors, on the same basis that they should set out why the application is potentially contentious and raises material planning issues which would affect the wider public interest.

Time Period for call in requests and rights to withdraw

15. The current position is that a request to call in a proposal has to be made by a Councillor before the end of the neighbour notification period, usually this is 24 days in total although it can vary dependent upon the type of consultation undertaken. This period of time is considered to be fairly short, and a number of Councillors and Officers have suggested this needs to be extended to enable time for the Councillor to discuss the application with the Planning Officer and reach a decision.
16. At its recent meeting Planning Committee resolved to recommend that the time period for Ward Councillors to refer an application to Committee be extended to 28 days.
17. The planning process is time constrained with a target for decision on most applications being 8 weeks. Beyond this period not only would this enable the applicant to appeal against non-determination, but also importantly the Local Planning Authority are required to publish its performance figures and stand the risk of being designated as poor performing if it fails to meet the government targets. Such designation could result in special measures being imposed upon the Council.
18. To balance the above, whilst allowing for some reasonable time to enable members to engage with the Planning Service once the issues of concern/merit become apparent, it is proposed to extend the period within which Councillors

can request a call in and specify that it must be made within 30 days of the application being registered.

19. It is proposed that the Councillor that has called in the application for consideration by Committee may withdraw their request at any time up until seven clear working days before publication of the Agenda for the meeting of the Planning Committee. This is to enable matters to be dealt with by delegated authority in such cases where public concerns have been addressed and the Councillor is satisfied that the public interest in the matter being considered by Committee is no longer a factor. The process will need to provide for a clear form setting out reasons for this withdrawal in order that the decision is transparent and clear.
20. In addition, it is proposed that a Councillor may seek a “conditional” call in. A Councillor would be able to seek that the application be considered by Committee if the planning officer is proposing to grant the application or refuse the application. By way of example, should an application be made that the Councillor considers would, if granted, be problematic in material planning terms and the public interest would be affected, they could seek that the application be called in to Committee if the planning officer was proposing to grant the application. If the planning officer proposed to refuse the application the matter would not be called in to be considered by Committee. The call in form to be developed would state very clearly the basis upon which the Councillor was choosing to call the matter in.

Parish / Town Council/Neighbourhood Forum call in

21. Parish and Town Councils are afforded the same rights as ‘neighbourhood forums’ and other ‘statutory consultees’ such as Natural England, the Local Highway Authority or the Environment Agency. These rights as set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) and require the authority to consult with them on certain applications.
22. It is proposed that where a Parish or Town Council, or Neighbourhood Forum, makes a representation (within the applicable statutory time limit for such representations) which raises material planning issues that would affect the wider public interest the Application will be considered by the Planning Committee.
23. This proposal recognises the democratic mandate that these Councils and Forums have in respect of their local area.

Summary of financial implications

24. If Council amends the Constitution to enable a higher level of call in powers, there could be an increase in applications being considered by Planning Committee. This will have resource implications although the exact impact will depend on the number of applications coming to the Committee.
25. The relevant Service Director will need to carefully monitor the impact with a view to redirecting resources as necessary.

Summary of legal implications

26. The options contained within this Report are all in accordance with the powers of the Council.

27. It should be noted that the Audit and Governance Committee is the relevant Committee to consider and review changes to the Constitution. In this event due to the level of concerns raised and need to have consideration at the July Council meeting, it has not been possible to bring these options to the Audit and Governance Committee as it does not meet until the end of July. The members of that Committee have been advised of the proposed changes and options, and also been invited to attend the Cabinet meeting to make any comments and suggestions in regard to this item.

Summary of human resources implications

28. There is a potential requirement for additional officer resource.

Summary of environmental impact

29. There are no environmental impacts arising from this report.

Summary of public health implications

30. There are no public health implications arising from this report.

Summary of equality implications

31. There are no new equality implications arising from this report.

Summary of risk assessment

32. There is a risk that additional resource will be required to support this proposal, however this needs to be balanced against the benefits of the proposal in terms of public engagement, transparency and the need to ensure there is public confidence in the planning system. There is a risk to the Council should there be a lack of confidence in the system and this proposal seeks to address some of the concerns raised.

Background papers

None