

Shropshire Council  
South Area Planning Committee  
Tuesday 15 October 2014

Item 3 Public Question Time: Procedure Rule 14.

Thank you Chairman and Councillors.

At the root of my question is the issue of the **trust, confidence, reputation and perception** of the County planning system and the **equality of opportunity and treatment** between citizens and developers.

I wish to obtain a response to what the following question:

What are the written procedures, processes, schemes of administration and codes of practice and the time requirements for relevant Notices to be issued during the processing of planning applications including after the Committee has agreed to unanimously reject a planning application, and the Minutes of that Committee have subsequently ratified that unanimous decision, and under what administration system and under whose authority may County officials act using 'exceptional special circumstances and criteria' (which are not in the public domain on the Council website or shown on the Planning Register) to allow the conduct of on-going private discussions with the applicant to the timely exclusion of those interested organisations and residents who expressed views on the original application and to re-present that same application to the Committee for determination? Copies of all relevant written documents would be of value.

In presenting the above question to the Committee I wish to use the opportunity to address the Committee without reference to any specific application.

I thank Mr. French for his response.

I have heard that a Unanimous decision by your Committee is **not** unanimous unless officers agree and that the use of *exceptional circumstance criteria* has been used on a number of occasions in recent months to refer applications back to Committee. Mr. French does not state how many of these occasions relate to a previous Unanimous decision to refuse. He states that the Scheme of Delegation of which I have a copy in front of me permits this action. My supplementary question therefore, using the example of the application in Wood Batch Road to which Mr. French refers, but which I did not reference, is:

Please specify:

- The relevant clause in the Scheme of Delegation which applies to 'exceptional special circumstances';

There is no specific clause in the Council's scheme of delegation (Part 8 of the Constitution) which covers the issue of referring applications back to committee. Section 24 of the scheme authorises officers to exercise appropriate powers in performance of the Council's duties. Section 21 provides for officers not to exercise delegated powers but to refer the matter to the Council, Cabinet or a committee for decision. The provision to report

applications back to committee has been used in a number of recent applications, which in total formed a very low proportion of those applications considered at committee.

- List the criteria used to define such circumstances;

There are no specific criteria which determine the circumstances when an application might be referred back to Committee following a previous decision. Such a decision would be based on clear concerns about the soundness of an approval or refusal reason and the professional judgment of senior officers. In the case of Woodbatch Road, there was no objection from the Council's Highways (Development Management) service. There were concerns therefore about the ability to defend a highway based refusal reason on appeal. The agent for the application had also requested that issue of the refusal decision be deferred in order to allow time to work up a more comprehensive highway betterment package, notwithstanding the lack of objection from Highway Officers. The agent advised that this would potentially reduce the possibility of an appeal at which the highway refusal reason would be tested, with the potential for costs to be awarded against the Council. The Area Development Manager agreed to this request having assessed the risk of costs being awarded against the Council on appeal as highly likely.

- On what dates, following the Committee's decision in July, ratified by its August minutes, did you discuss the matter:

- (a) With the Chair of the Committee and local elected representative to agree that the special exceptional circumstance rule applied

The applicant submitted a highway report on 16<sup>th</sup> September and the the Area Highways Development Control Manager met the local Member Councillor Barnes on site on 26<sup>th</sup> September to discuss these proposals. I believe a Town Council representative also attended the meeting. The Chair of the Committee was informed of the decision to report the application back to committee when the Agenda for the meeting was circulated 9 days before the committee. The matter was subsequently discussed at the Chair's Briefing on the morning of the Committee.

- (b) With the applicant to agree what further information was required to over-turn the unanimous decision;

The agent first raised the matter of the Woodbatch Road decision with the Area Development Manager at a prearranged meeting in relation to another application on 23 July 2014. The agent stated that the applicant intended to submit some additional information addressing concerns which members had identified. The Area Development Manager indicated that, subject to consultee response and if the information was considered to be a new material consideration, it may warrant referral back to Committee. The agent contacted the Area Development Manager in early September 2014 requesting that issue of the decision be deferred pending preparation of additional highway information, notwithstanding the lack of objection from highway officers. The latter agreed that the application would be reported back to committee. The Area Development Manager made this decision under Sections 14 and 24 of the Council's scheme of delegation.

- (c) With the statutory consultees, notably Highways;

The Area Highways Development Control Manager has had a detailed involvement throughout the planning process and attended the meeting with Councillor Barnes on 26<sup>th</sup> September as well as a number of other meetings. The additional information and discussion was linked specifically to detailed highway matters.

(d) **With the democratically elected Town Council and the many residents who opposed this application.**

It is understood that the Town Council attended the meeting on 26<sup>th</sup> September at which the additional highway improvements were presented by the applicant's highway consultant. The application was in outline and if it had been approved then the various elements of the suggested highway improvement package would have been put forward for consultation with the local community at the reserved matters stage. The Town Council had already been advised of a key element of the highway scheme, namely the proposed change in priority at the Woodbatch Road / Kerry Lane junction at an earlier stage in the processing of the application.

The applicant has indicated an intention to appeal so this issue will now be assessed by a Planning Inspector.

### **Further Clarification of delegation procedures**

Section 24 of the Council's scheme of delegation authorises officers to exercise appropriate powers in performance of the Council's duties.

Under Section 2 of the delegation scheme the Head of Economic Growth and Prosperity, is authorised to exercise these powers as they relate to the planning function. Under Section 3, the Head of Economic Growth and Prosperity may in turn authorise The Development Manager to exercise on his behalf, functions delegated to him. Section 14 provides that in the event of an Officer referred to in Part 7 or by title within this Part 8 not being available for whatever reason, his/her Deputy (or, where there is no officer designated as such, the next most appropriate senior officer ) shall be authorised to implement approved delegated arrangements

Section 9 of the delegation scheme places an obligation on officers to keep members properly informed of any action taken under these delegations and to record such decisions. The local member, Cllr. Barnes was informed of the decision to report the application back to committee and of the reasons for this.

Section 19 of the Delegation Scheme requires that in exercising delegated powers, officers shall consult other officers as appropriate and shall have regard to any advice given. In the case of the Woodbatch Road application, the decision to refer the application back to committee was taken by the Area Development Manager in consultation with the Development Manager and the relevant Principal Planner, having regard also to advice received from officers in the Council's Highways and Legal Services sections.

### **Scheme of Delegation for committee referral of planning applications**

All planning applications are delegated to the Head of Economic Growth and Prosperity with the exception of the following which shall be determined by the relevant committee:

- Applications made, by or on behalf of, or relating to the property of members or officers of the Council who hold politically restricted posts or who either directly or indirectly report to the Head of Economic Growth and Prosperity
- Applications made by the Council or in relation to land owned by the Council which are not in-line with statutory functions (this would mean that class room extensions

etc. were delegated to officers but speculative proposals on council owned land would not be)

- Applications accompanied by a Schedule 1 Environmental Statement
- Complex or major applications which in the view of the Head of Economic Growth and Prosperity or the Service Manager with responsibility for Development Management in consultation with the committee chairman or vice chairman should be determined by the relevant Planning Committee

(The Woodbatch Road application does not fall into any of the above categories).

- Member Call In: Applications requested to be referred, by the Local Member, to the relevant Planning Committee within 21 days of electronic notification of the application and agreed by the Service Manager with responsibility for Development Management in consultation with the committee chairman or vice chairman to be based on material planning reasons. A Practice Note is available in relation to "material planning considerations".
- Parish and Town Councils: Applications where the Parish Council submit a view contrary to officers (approval or refusal) based on material planning reasons the following tests need to be met:
  - (i) these contrary views cannot reasonably be overcome by negotiation or the imposition of planning conditions; and
  - (ii) the Area Manager or Principal Planning Officer in consultation with the committee chairman or vice chairman and the local member agrees that the Parish/Town Council has raised material planning issues and that the application should be determined by committee.

The Woodbatch Road application was referred to committee by the local member following objection from the Town Council and that decision was ratified by the Area Development Manager after consulting with the chair and vice chair of the committee.

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