

## Motions on Notice

To: Constitution and Ethics Committee

Meeting Date: 25 February 2022

From: Democratic Services Manager

Outcome: To clarify how the Council will treat motions submitted to Full Council which relate to planning applications.

Recommendations: The Committee is asked to:

Consider the proposed amendments to the Constitution, as set out in Section 2.9 of the report, and recommend any changes to Full Council, if considered appropriate.

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## 1. Background

- 1.1 Motions on notice can be moved for discussion at Council meetings, provided they comply with the notice requirements set out in section 10.1 of the Council Procedure Rules (Part 4.1 of the Constitution).
- 1.2 Section 10.3 of the Procedure Rules requires that motions must be about matters for which the Council has a responsibility, or which affect the County. It also clarifies that motions may propose an addition or change to a policy framework provided that the addition or change could not reasonably have been raised when the policy framework was originally approved.
- 1.3 Section 10.4 states that motions will not be permitted to raise the competence or performance of a councillor or officer, or any matter involving exempt information or normally considered confidential, nor can they make any abusive or defamatory comments.
- 1.4 Section 9.3 (Public Question Time) of the Council Procedure Rules states that if the Monitoring Officer considers a public question that has been submitted relates to a planning application, they will inform the Chair who will then decide whether or not to reject the question. Section 9.4 (Petition Scheme) states that petitions relating to planning applications are to be considered by the Planning Committee and not Full Council. While the Council Procedure Rules restrict public questions and petitions relating to planning applications, they do not currently include a similar restriction for motions.
- 1.5 Concern was expressed at the Council meeting on 25 January 2022 about the danger of Full Council pre-determining applications to be considered by its Planning Committee. It was therefore requested by the Joint Administration that the Constitution and Ethics Committee consider changes to the Constitution in order to avoid such situations in the future.

## 2. Main Issues

- 2.1 The Council has recently taken decisions on motions relating to planning applications. Two motions were submitted to the Council in relation to Nationally Significant Infrastructure Projects (NSIPs), on 'Wisbech Energy from Waste' (July 2020) and 'Sunnica Solar Farm' (July 2021) where the motion movers wished to show their support for concerns raised by residents. Although NSIPs are determined by the Planning Inspectorate (PINS) on behalf of the Secretary of State, such projects, should they reduce in size to trigger the NSIP threshold, could fall for determination by the Council's Planning Committee.
- 2.2 Planning applications can often be contentious and generate significant public interest which in turn is relayed to Members. The Council has a statutory duty to determine planning applications, delegated to the Council's Planning Committee, and the regulatory process places an emphasis on participating members avoiding pre-determination and bias.
- 2.3 Motions to Council regarding planning applications therefore have to be very carefully worded in order to avoid the risk of pre-determination. Members of the Planning Committee have to consider whether taking part in debate and voting on such a motion could lead to a risk of pre-determination or bias, potentially increasing the risk to the Council of legal

challenge. If any such challenge is successful, this can potentially vitiate the Council's decision.

- 2.4 Committee memberships are reviewed and can be changed at each annual meeting of Full Council and during the course of the municipal year. If a Member does not excuse themselves from the debate and votes on such a motion, and then subsequently becomes a member or substitute member of the Planning Committee having previously debated and voted on such a motion, they then need to consider the potential risk of being challenged on the grounds of pre-determination and/or bias. If they decide to recuse themselves and other Members are similarly conflicted, there is the potential for an inquorate Planning Committee.
- 2.5 Given the complexity and risk of legal challenge to the determination of planning applications (both by the applicant and members of the public through a judicial review process), the Committee is asked to consider whether the best overall defence for the Council against such challenge is to only consider such matters at the relevant Planning Committee (which includes the District Council planning committees where relevant, based on technical officer advice submitted to them by the Council), or through the relevant Examination by PINS for NSIPs.
- 2.6 Current case law offers a defence to the current position where motions on planning matters can be considered by Full Council, highlighting the distinction and separation of powers between Full Council and Planning Committee, particularly where emphasis is placed on measures taken to demonstrate that elected Members sitting on the relevant planning committee are not pre-determined. However, planning officers remain concerned that it would be harder for the Council to defend either an appeal or judicial review where such an event has taken place. They would endorse an amendment to the Council Procedure Rules to help strengthen the Council's position in the event of any legal challenge, and ensure that such matters are considered and determined in the correct forum as:
- It would be easier to demonstrate that no pre-determination has taken place, particularly for an application currently awaiting determination by the Council;
  - The current system could potentially leave the Planning Committee short of regular members and trained substitutes to determine an application or inquorate, or with a reduced but quorate committee (that may not represent all political parties) which could be perceived as not doing a very contentious planning application justice;
  - Not all the information on the current planning application would necessarily be available to elected Members at the point of the motion, which is why planning applications are not taken to the relevant planning committee until they are ready with all the information and representations made and assessed;
  - The planning system is clear that decisions need to be made based on the development plan and other policy / guidance, so a moratorium type approach to certain developments (e.g. Energy from Waste (EfW) developments) would be used against the Council's own adopted planning policy which has only just been adopted by the Council; and

- Objectors may interpret a motion as the Council's final and fixed position and wonder why it even entertains any future applications for EfW (incineration) developments – even where it is clarified that it would be to support the concerns of the resident and not determine the application.
- 2.7 Planning appeals are time intensive and costly. The costs are borne by the Council, not PINS. The costs to the Council for the Waterbeach Energy from Waste scheme were significant, and whilst there will be instances where it is necessary to defend such decisions, officers are concerned that the Council is not placed in such a position unnecessarily through concerns around the decision-making process.
- 2.8 Other local authorities have implemented restrictions to motions on notice that relate to planning matters, including Nottinghamshire County Council and Wiltshire County Council.
- 2.9 It is therefore proposed the Committee considers combining sections 10.3 and 10.4 of the Council Procedure Rules to form a list, along with a further restriction to motions related to planning matters, as set out below (addition in bold, removal in strikethrough).

### 10.3 Scope

~~Motions must be about matters for which the Council has a responsibility or which affect the County. They may propose an addition or change to a policy framework provided that the addition or change could not reasonably have been raised when the policy framework was originally approved.:~~

- (a) Must be about matters for which the Council has a responsibility, or which affect the County;**
- (b) May propose an addition or change to a policy framework, provided that the addition or change could not reasonably have been raised when the policy framework was originally approved;**
- (c) May not raise the competence or performance of a Councillor or officer;**
- (d) May not raise any matter involving information that is exempt or normally considered confidential;**
- (e) May not make any abusive or defamatory comments.**
- (f) May not be related to a planning application, or any other quasi-judicial matter, that will or could be determined by the Authority, including Nationally Significant Infrastructure Projects (NCIPS), or for which it is a statutory consultee.**

### ~~10.4 Motions affecting Councillors or persons employed by the Council~~

~~Motions will not be permitted to raise the competence or performance of a councillor or officer, nor any matter involving exempt information or normally considered confidential. A motion cannot make any abusive or defamatory comments.~~

### 3. Source documents

3.1 [Cambridgeshire County Council Constitution \(Part 4-1 – Council Procedure Rules\)](#)

3.2 [Nottinghamshire County Council Constitution \(Part 5 – Democracy Procedures, Section 59\)](#)

3.3 [Wiltshire County Council Constitution \(Part 4 – Council Rules of Procedure, Section 18.7\)](#)

### 4. Appendices

4.1 None