

Report to: Lead Cabinet Member for Transport and Environment

Date of meeting: 14 March 2016

By: Director of Communities, Economy and Transport

Title: Notice of Motion: County Council responsibility for determining planning applications within its boundaries

Purpose: To consider a Notice of Motion from Councillor Field to confirm that the Council has full responsibility for determining planning applications within its boundaries, and, that the Leader takes certain measures to lobby Central Government to maintain this situation.

RECOMMENDATIONS: The Lead Member is recommended to recommend that the County Council rejects the Notice of Motion from Councillor Field because it does not reflect the current statutory position.

1 Background Information

1.1. The following Notice of Motion has been submitted by Councillor Field:

“This Council believes that Local Government is an autonomous body and as such has full responsibility for determining planning applications within its boundaries. This Council requests its Leader:

i) to take all possible measures to lobby Central Government to ensure that local accountability is maintained

ii) enlist the help of the Local Government Association and the County Councils' Network to pursue this aim.”

1.2 In line with County Council practice, the matter has been referred by the Chairman to the Lead Member for Transport and Environment for consideration to provide information and inform debate on the Motion. The Lead Member's recommendation on this Notice of Motion will be reported to the Council at its meeting on 22 March 2016.

2 Supporting Information

2.1 In the context described in the Notice of Motion, it is considered that the County Council is not an autonomous body, and as such does not have full responsibility for determining planning applications within its boundaries.

2.2 The County Council needs to operate in accordance with legislation. With regard to planning matters, if it was to adopt policy or determine planning applications in an unlawful way it would be liable to a legal challenge, and, in consequence could be liable for payment of costs.

2.3 The County Council does not have full responsibility for determining planning applications within its boundaries. The County Council is not the planning authority for the area covered by the South Downs National Park which constitutes about one third of the County – this is the South Downs National Park Authority. Also, the County Council can only appraise planning applications relating to waste and minerals, and its own development. All other types of development which require planning applications are considered by the Borough and District Councils.

2.4 Section 77 of the Town and Country Planning Act 1990 allows the Secretary of State to give directions requiring applications for planning permission to be referred to him instead of

being dealt with by the local planning authority. This can be done at any time during the planning application process prior to determination. If a planning application is called in, there would be a Public Inquiry. The power to call in planning applications is very general, and the Secretary of State can call in an application for any reason.

2.5 The Government also has powers to “designate” or take away the determination of planning applications by those Councils considered to be underperforming. The Growth and Infrastructure Act 2013 inserted into the Town and Country Planning Act a new section whereby planning applications can be made directly to the Secretary of State where a local planning authority has been designated for this purpose. The Government’s current minimum performance threshold is 50% of major development decisions being within the statutory determination period measured over 2 years. The Government in February 2016 has published a technical consultation on implementing planning changes. This includes setting new thresholds for non-major development for both speed and quality of decisions. Where authorities fail to determine at least 60-70% of non-major development on time, they would be at risk of designation and thereby applications could be made direct to the Secretary of State or Planning Inspectorate.

2.6 It is considered therefore that the Notice of Motion as written does not fully reflect the statutory position affecting the County Council in determining planning applications.

2.7 It is considered that the Notice of Motion submitted by Councillor Field should therefore be rejected as it does not identify the correct statutory powers of the County Council. The County Council has to operate, as a County Planning Authority, within the legislative requirements for planning authorities in determining relevant planning applications within its boundaries, including where the Secretary of State has resolved to determine the application himself. The County Council is under a legal duty to determine each application having ‘regard to the provisions of the development plan, so far as material to the application, and to any other material considerations’. The County Council is not in a position where it can fetter future decisions on any type of applications, which must be determined on their merits.

3 Conclusion and Reasons for Recommendations

3.1. The County Council does not have full responsibility for determining planning applications within its boundaries. The South Downs National Park Authority is the local planning authority for all land within the National Park. The County Council can only appraise planning applications relating to waste and minerals, and its own development. All other types of development which require planning applications are considered by the Borough and District Councils. There are powers for the Secretary of State to call in applications for his determination. There is Government policy in certain areas to intervene in the determination of planning applications where there is under-performance. The Lead Member is therefore recommended to reject the submitted Notice of Motion.

RUPERT CLUBB

Director of Communities, Economy and Transport

Contact Officer: Tony Cook

Tel. No. 01273 481653

Email: tony.cook@eastsussex.gov.uk

LOCAL MEMBERS

All

BACKGROUND DOCUMENTS

- Department for Communities and Local Government: Technical consultation on implementation of planning changes – February 2016

<https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>