

Unconfirmed



Minutes of a Meeting of the **Scrutiny Committee** held in the Conference Room, Riverside,
on **Thursday, 2 March 2023 at 6.30pm**

Members of the Committee present:

Councillor Edward Back, Councillor David Beavan, Councillor Stuart Bird, Councillor Judy Cloke, Councillor Linda Coulam, Councillor Tony Goldson, Councillor Louise Gooch, Councillor Geoff Lynch, Councillor Keith Robinson

Other Members present:

Councillor Paul Ashdown, Councillor Peter Byatt, Councillor Mick Richardson, Councillor David Ritchie

Officers present: Kate Blakemore (Strategic Director), Sarah Davis (Democratic Services Officer), Matt Makin (Democratic Services Officer (Regulatory)), Katherine Scott (Principal Planner)

1 Apologies for Absence and Substitutions

Apologies for absence were received from Councillor Deacon, with Councillor Byatt attending as substitute; and Councillor Hedgley with Councillor Richardson attending as substitute.

2 Declarations of Interest

There were no Declarations of Interest.

3a Minutes

RESOLVED

That the Minutes of the Extraordinary Meeting held on 26 January 2023 be approved as a correct record and signed by the Chairman.

3b Minutes

RESOLVED

That the Minutes of the Meeting held on 16 February 2023 be approved as a correct record and signed by the Chairman.

4 Matters Arising Update Sheet

The Committee noted the Matters Arising Update Sheet in relation to queries raised at the last meeting of the Committee.

5 Democratic Accountability within the Planning Process

The Committee received report ES/1489 from the Cabinet Member with responsibility for Planning and Coastal Management.

The Chairman informed the Committee that, in accordance with the agreed scoping document, SALC and Councillors Ashdown and McCullum, as the Chairmen of both Planning Committees, had been invited to speak, however, Councillor McCullum had submitted her apologies and, unfortunately, due to the relatively short notice of the invitation, SALC had not been able to attend but had submitted a written paper which had been circulated prior to the meeting.

The Cabinet Member stated that he welcomed scrutiny, explaining that the Local Plan Working Group (LPWG) provided a lot of scrutiny in planning policy matters and the Strategic Planning Committee was another level of scrutiny, which looked forensically at how the Service operated. He asserted that all scrutiny helped and pointed out that there was a lot in the paperwork about transparency, and scrutiny was a way in which to spread the word about how it all worked. The Cabinet Member continued that Planning was a rule based system in that the Government, which was democratically elected, set the National Planning Policy Framework which had to be adhered to. Occasionally the Government reformed Planning rules and Officers would draft a response to the consultation which was considered by the LPWG and himself. He explained that East Suffolk had two Local Plans, which took about three years to produce and at every stage was reviewed by the cross party LPWG, but they had to be accountable to the National Framework. He added there were also Neighbourhood Plans, which were largely produced by voluntary Town and Parish Councils who might not be elected, although there was a referendum in the Parish to adopt the Plans e.g. the recent ones at Oulton and Halesworth had high turnouts. He stressed that Councillors on a Planning Committee had a quasi judicial role and had to work within the law and the rules, and they were supported by Officers because sometimes there were material planning considerations for and against, so Officers were needed to provide advice to Councillors.

The Chairman invited Councillor Ashdown to speak. Councillor Ashdown stated he felt the East Suffolk process was very democratic and pointed out that, although the Planning Committees had nine Councillors each, all Councillors could use Public Access to view applications and put their comments in writing, or they could call the relevant Planning Officer if there were any issues. He added it was the same for Town and Parish Councils and Councillors could pass their comments on too. Everyone had a 21 day window to get comments in and, even after that, they could email Committee Members. He explained that applications were delegated to Officers if no problems or issues were identified but the ones Members considered were those applications that had issues, or where contrary comments/recommendations to those of the Officers had been received. These were then referred to the weekly Referral Panel, which

comprised the Chairmen and Vice-Chairmen of both Planning Committees, who decided if the application should be considered by the Committee or delegated to Officers. He stressed that Members had been encouraged to attend Referral Panel to listen but stressed they could not comment on applications, although Ward Councillors were asked if the Officer's report was accurate and the Panel could also ask them if there was any other information they should know before they determined the route of the application. He commented that, if the Panel disagreed on the route of an application, it then went back to the Head of Planning for a decision and he looked at the report and presentation as well as the material planning considerations. It was stressed that he did not always decide to delegate applications back to Officers, some had been referred to Committee. Similarly, some applications were automatically referred to Committee for decision to ensure transparency e.g. major applications, any that concerned the Council's land or our applications, Member's applications or their close relatives, and employee's applications.

In response to the Chairman's question, Councillor Ashdown clarified the Referral Panel's role was not to determine the merits of applications but only the route, so if the Panel felt the application warranted debate then it would go to Committee but if the Panel were content that the information they had did not require any further debate then it would be delegated to Officers. He stressed the Referral Panel did not decide applications, that was left to the Planning Committees or Officers.

In relation to a query on Government targets for the number of Officer delegated decisions, it was noted that approximately 95% of all applications should be dealt with under Delegated Powers. The Principal Planner clarified that the Government set targets over a two year period based on the scale of applications e.g. majors, and minors and others such as household extensions. If the Council did not meet the targets for that two year period then the Planning Inspectorate could come in and take the power away, usually based on a particular class of application rather than all of them, and the Inspectorate would then make the decisions.

Councillor Goldson queried how the Referral Panel could be a democratic process if the Panel was split and the decision was then given to an Officer and he asked why the Panel Chairman could not have a casting vote. Councillor Ashdown responded that this process was set out in the Council's Constitution. The Cabinet Member agreed that this was something that could be looked into and suggested that maybe it should be the Cabinet Member who made the decision rather than an Officer. He echoed the invitation for all Councillors to attend Referral Panels to give them an insight into the process. The Chairman clarified that if Members wished to change the Constitution to enable the Cabinet Member to decide in the event the Panel was split, then that would need to be considered by Strategic Planning Committee, Audit and Governance Committee and Full Council.

In response to Councillor Beavan's query, Councillor Ashdown confirmed Ward Councillors could attend Referral Panels but they could not voice an opinion on the route of the application. Councillor Beavan also queried if the 95% target for delegation included applications by Council employees etc and, if so, did that mean if there were a lot of such applications then that would skew the figures and be difficult to achieve the target. The Cabinet Member stated the aim was to be transparent so if applications were submitted by staff or Councillors, or their close connections, then they should go

to Committee. He added he was confident any applications that needed to be discussed by Committee would be and stressed there was room in the 5% for the Committee to consider the other three types of applications. The Principal Planner stated that, in the last financial year ending March 2022, 34.2% items at Planning Committee were those called in by the Head of Planning or Planning Committee Chairmen/Vice-Chairmen because there was significant public interest, 36.9% were at Committee because there was an East Suffolk connection, e.g our application or staff etc, and the remaining 28.8% were items that went via the Referral Panel and were then considered by the Planning Committees, so it was roughly a third. She stressed that if a certain percentage in a year went to Committee, it did not mean others would not be taken because if it triggered then it went.

Councillor Lynch stated that targets and percentages should not be considered and applications should be decided purely on their merits. Councillor Ashdown responded that, although they wanted to see 95% of decisions delegated as that was the Government's target, that did not mean it would be achieved because every application was treated in exactly the same way and so if it was felt a Committee decision was needed then that was where it would go. He explained that the majority of applications that came before the Committee, or even those that went before the Referral Panel, did not have any material planning reason to take them to the Committee. The Cabinet Member reassured Members that, whilst the Government set targets about what they would like to be delegated, applications were decided entirely on their merits so if we had many more applications coming before Committee that would not meet the target. He suggested the Government set targets because many other Councils brought forward applications that did not really need to go before Committee. He pointed out that 90% of applications were uncontentious and Town and Parish Councils were happy and it would seem Ward Councillors were in favour as very few comments were received from them. Councillor Ashdown agreed that the majority of Ward Councillors did not comment on applications. The Chairman pointed out that the report stated that, in 2021/22, 244 applications went to Referral Panel and only 19 (7.8%) had comments from Ward Councillors.

Councillor Coulam stated that she had attended Referral Panel for a year or so but was disappointed that she was no longer able to see the paperwork. The Cabinet Member thanked Councillor Coulam for her regular attendance but responded that papers had previously been made available to visiting Councillors in error. The Principal Planner explained that sharing paperwork with all Members at Referral Panel stage meant agents, applicants and the Parish Council etc did not get them at the same time, so paperwork should not be given out that early in the process. The Cabinet Member reiterated that the Panel was only determining the route so this was the same reason why Ward Councillors had to limit their comments at the Panel because they were not there to discuss the merits of the actual application. Councillor Ashdown pointed out that, if an application went to Committee, everyone could speak for three minutes and Committee could then question them, and Ward Councillors actually got five minutes plus questions.

Councillor Byatt referred to page 16 and suggested that, at some point, Officer resource needed to be reviewed. He queried how many referrals that came from Parishes, which were objections, were then rejected and also what training was given to them to understand the process. The Cabinet Member agreed more training was

needed for District Councillors and others but acknowledged there were Officer capacity issues. He added there had always been training for Town and Parish Councils and usually about 40/50 attended. He suggested there was a disconnect between the way Planning worked and the way many of the Parishes saw it, with many thinking that the Planners ignored their comments. He stressed, however, that Planners did consider material considerations brought up by Parish Councils and similarly Planning Committees were quasi judicial so again they had to consider material considerations.

Councillor Gooch referred to paragraph 2.34 on page 32 regarding the lack of comments from Ward Members and suggested it would have been useful for the report to include details of the Wards of Planning Committee Members as she queried if there were two Ward Members sitting on a Planning Committee this might be why they did not make comments. She also queried if Ward Members needed more training. The Cabinet Member pointed out that Ward Councillors could still comment for or against an application even if they sat on Committee as long as they were not predetermined. He added that the make-up of the Committee might be unbalanced which was why it was so important that Members were not there in their Ward capacity but looked at applications impartially, therefore, it should not matter that there might be someone on the Committee for a particular Ward. He reiterated he wished to encourage as much involvement of Ward Councillors as possible. Councillor Gooch expressed concern that a particular application she had submitted an objection to as Ward Councillor had been delegated to Officers rather than going to the Referral Panel and she queried how often this happened. The Cabinet Member stated that he had not known this to happen before and acknowledged it sounded like this was a technical mistake and the application should have been considered by the Panel.

Councillor Beavan suggested that, if the Panel wanted Ward Councillors to comment on accuracy, it would make sense for them to have the paperwork in advance of the Panel. He also queried if Members had been asked why they were not engaging in the process and, given this was a quasi judicial process, he queried if the role of the Ward Councillor was to be an advocate. The Cabinet Member pointed out that Ward Councillors were an advocate when they spoke at Committee. In relation to the documents being given in advance, he acknowledged the point, adding that this could be considered, but cautioned that there could not be wide distribution for the reasons stated earlier.

Councillor Lynch suggested there was not enough guidance on the website as to what constituted an objection on planning grounds and added that it would be useful for Councillors to have somewhere to direct the public for more information. The Principal Planner confirmed there was a Council website page that set out how to make comments on applications, how we consult, what material considerations were, and a list of things to try to avoid. The Cabinet Member added that Councillors and the public could also talk an application through with the Case Officer. Councillor Lynch pointed out that Officers were only available during the day and suggested a simpler page of information was needed. The Cabinet Member acknowledged the point but suggested that, as each case was individual, it was unlikely all the information could be condensed in just one page. Councillor Gooch suggested an advisory note be added to contact the Ward Councillor because if they contacted a Committee Member they might not respond in case they were seen as pre-determined. Councillor Ashdown pointed out he was in a single Councillor Ward so any queries came to him and he

always listened, looked at Public Access, spoke to the Case Officer, then went back to that person and answered any queries they had but still did not give a decision on his views on the application. Councillor Richardson suggested a QR code or hyperlink on the public notice to take the public directly to a page or YouTube video to show them what they could or could not object to. The Principal Planner stated that she would have to find out if this was technically possible because there was already a QR code on the notice to take them to the application.

The Chairman queried if having Ward Councillors at Referral Panel created an expectation that could not be fulfilled as they were limited to a yes/no response in relation to the accuracy of the officer's report. The Cabinet Member responded that he felt it was an essential improvement that worked really well as Ward Councillors could give factual clarity to the Officer's presentation so he did not feel it muddled the water. Councillor Ashdown agreed, adding that, whilst most Ward Councillors commented that the Officer's presentation was accurate, if the answer to that question was no then the Panel could ask the Ward Councillor the reason.

In response to Councillor Byatt's earlier question in relation to the disputed view between the Parish and Officers and what number of cases were approved and declined, the Principal Planner reported that, not including those that went to Committee, the Referral Panel had three applications that the Town/Parish Council had objected to which were subsequently refused between 1 April and 31 March 2022. In terms of applications that went to Committee, 21 had been objected to by the Town/Parish Council and referred to Committee.

The Chairman thanked Councillor Ashdown who left the meeting at 7.37pm.

Councillor Goldson referred to the comments in the SALC survey report relating to Neighbourhood Plans and pointed out that they were done through the Parishes and the Planning Authority had to comply with the Plan, however, Officers interpreted the Plans so this was not seen by Parishes to be very democratic. The Cabinet Member clarified that, once adopted, Neighbourhood Plans were a material consideration in the same way as Local Plans and the National Policy Framework. He explained that most applications had various material considerations, some of which would say it should be accepted and some would say it should be rejected, so Neighbourhood Plans should not be seen as the letter of the law. He added that occasionally there would also be exceptions to Policy that had to be made by the Committee not Officers. The Cabinet Member reiterated that Parishes could always contact the Case Officer for advice.

Councillor Beavan asked if any applications had been called in within the last year at Waveney and he also queried if the 21 day consultation period could be extended as most Parish Councils met monthly. The Principal Planner confirmed that Parishes could request extensions but clarified that 21 days was set in law, which was 15 working days, as a minimum. She added that the site notice and press notice went out after the letter, so that extended the consultation period and the date on the website was the expiry date, so provided Parishes got their comments in before that date they were within the timescale. The Cabinet Member stated that the Constitution delegated power to the Head of Service unless the planning application was, in the opinion of the Head of Service or Chairman/Vice-Chairman to be of significant public interest, it had environmental impact or had significance in some other respect. He suggested,

therefore, that it was now simpler than the old call in system and if Ward Councillors felt an application should go to Committee then they could contact the Chairman/Vice-Chairman. In response to Councillor Beavan's query, the Principal Planner stated she was not aware of any applications called in within the last year of Waveney. The Cabinet Member gave an example that the Referral Panel had sent three applications to Planning Committee South last week because the Parish Council had objected but pointed out that none of them had attended or spoke at the Committee, which meant they did not hear the facts as to why the applications were allowed, although he acknowledged they might have listened in to YouTube.

Councillor Gooch referred to the report which stated that 90% of Parishes were on Public Access and queried if that had a material impact on engagement. The Cabinet Member pointed out that some Parishes were tiny and did not have a lot of resource so were not on Public Access. The Principal Planner explained that it was mainly the small parishes that did not necessarily have a full Parish Council, but Officers had helped them to create accounts during the first Covid lockdown. She added that the percentage might be different now as those figures were based on last year.

Councillor Gooch referred to paragraph 2.59 of the report relating to routes to Planning Committees and suggested that applications for fast food outlets, where there was usually considerable public objection due to the impact on the environment or even public health, should automatically go to Referral Panel or Committee rather than being delegated to Officers. The Cabinet Member stated that fast food was not a primary planning consideration and only the Government could change the rules not the Council. He acknowledged, however, that, whilst he would probably have agreed with Councillor Gooch on the particular case she cited, clearly the Head of Service had felt it was not of significant public interest to be put to Committee.

Councillor Goldson referred to the previous call in process at Waveney which he felt had worked and reiterated that he did not feel it was democratic if an application only went to a four person Panel and then an Officer made the decision if they were split. The Chairman informed the Committee that East Suffolk had a four person Panel, West Suffolk had something similar called a Delegation Panel but he was unsure about Babergh and Mid Suffolk and he queried, therefore, if this Council's solution was democratic and how it compared to elsewhere eg Babergh. The Cabinet Member responded that he was not sure about Babergh but, as he had said earlier, the Strategic Planning Committee could consider changing the Constitution at its next meeting so it was the Cabinet Member rather than the Head of Service who decided. He added that the Planners had a wide knowledge of how other Councils operated e.g. the Head of Service was currently doing a peer review, and the Planning Development Manager was at a national planning conference.

In response to Councillor Byatt's query of where in the process the Parish Council could change their mind and object, the Cabinet Member stated that if something was wrong with the process it could go to a judicial review.

Councillor Coulam asked for clarification on the distinction between minor and major applications. The Principal Planner stated that the definition of a major, minor and others was defined by the Government and was based on the site area or floor area, and "others" were specifically householder developments and change of use.

In response to a comment from Councillor Beavan in relation to the absence at this Committee of the Council's two most senior Planning Officers, the Cabinet Member explained that they had wanted to be present but had other commitments. The Chairman clarified that Officers had been notified of the date of this meeting in September 2022 and the date had been publicly notified, so he was disappointed that the commitments of the two Officers had taken precedence over this Committee given the length of notice they had been given. The Cabinet Member apologised and pointed out that he and the Principal Planner were present to answer any questions.

In response to Councillor Gooch's query, the Cabinet Member clarified that objectors had three minutes in total to speak so if there was more than one objector it was split. Councillor Gooch referred to the comments in the SALC report that this was too short a timescale and queried when it would be reviewed. The Chairman also asked where the three minutes came from and specifically did the Cabinet Member feel it was long enough to give their views on an application. The Cabinet Member responded that, in his experience, objectors who kept their comments within the three minutes tended to influence the Committee rather than if they took longer. He added this Council allowed Committee Members to question objectors which could take another ten minutes and a lot of other Councils did not allow that. He stated this could be looked at again at the next Strategic Planning Committee.

The Chairman referred to the results of the SALC survey in that many were happy in terms of accuracy and timing but communication was where they felt the Planning Service fell down. He also referred to the recent meeting with SALC and queried what happened at that meeting and if there were any further actions arising from it. The Cabinet Member stated that it was an initial meeting with Officers after the survey had been carried out but unfortunately the full survey results had not been given and the summary did not tell all the responses, so he did not want to get too much into the results. He added that the Council had offered to help with the survey wording because SALC were not Planners but they had refused the offer. He concluded it had been useful to meet with them to find common ground and to speak to them about democratic accountability. Notwithstanding the Cabinet Member's comments regarding not having the full results, the Chairman pointed out that the summary respected anonymity and still summarised the results. He added that the Committee had asked for the report to include comments on the SALC survey but Officers had declined to do so. He repeated his question about what had happened at the meeting with SALC, had anything been decided and would there be any further meetings. The Cabinet Member responded that he had been told it was a useful meeting and found common ground, so it was a good thing to meet. He added that he wanted to improve on communication and transparency. The Chairman requested that the Committee be provided with a summary of what had happened at the meeting as part of their matters arising.

In response to Councillor Byatt's query regarding Officers no longer going on site visits due to Covid, the Principal Planner explained that they had been paused for the extent of the first lockdown, they had then been prioritised with Officers taking precautions e.g. they could not go into buildings until later on, however, she assured Members that site visits had been undertaken again as normal for some time.

In relation to Planning Enforcement, Councillor Gooch queried how often developers were asked to take developments down. The Principal Planner explained that, if a report was received, it would be logged and investigated, however, it could be difficult to sustain taking enforcement action as a large proportion were not planning breaches.

In response to the Chairman's query on how awareness could be increased to encourage Members to get involved, the Cabinet Member responded that Councillors had training when they were first elected and they could get to know Officers, and in future there would be area based Planning Officers. Councillor Gooch asked if more training was needed and the Cabinet Member responded that those sitting on the Planning Committees were required to go to the training but he suggested it would be beneficial for all Members to attend. It was clarified that Planning Committee Members would be required to attend two training sessions as part of the Induction Programme in May 2023 and all Members would be invited to attend them as well.

The Chairman invited the Cabinet Member to sum up and he stated that he thought the Scrutiny review had been useful and brought up some interesting points.

The Chairman invited the Committee to debate what they had heard.

In response to the issue of non-engagement by Town and Parishes in the process, Councillor Beavan suggested there was a need for a channel for Ward Councillors who, if concerned, could call in an application, given it had been confirmed there was room in the 95% delegation target for a call in process. He referred to the fact that Officers had not found any incidences where an application had been called in previously and the only one he knew about was from former Councillor Elliott. He referred to several other Councils that had a call in process. He suggested a "triple lock" process whereby a Ward Member, a member of Planning Committee who knew Planning rules and who might also be the Ward Member, and the Parish/Town Council could call in an application to the Planning Committee thus bypassing the Referral Panel.

It was clarified that if the Committee wished to make this a formal recommendation it would need to go to the Strategic Planning Committee rather than Cabinet, and then on to Full Council if it was not approved. If a change of Constitution was then required it could go to Audit and Governance or Full Council could decide.

Councillor Lynch agreed to the principle of the "triple lock" but sought clarification on what would happen in a single Member Ward and if they happened to be on the Planning Committee, as that would no longer be a "triple lock" and he expressed concern it would be unequal if some applications only needed two elements of the lock but others needed three. Councillor Beavan clarified that he proposed that if the Ward Councillor was a member of a Planning Committee then it only needed them and the Town/Parish Council to call it in to the Committee.

Councillor Goldson pointed out that Planning was one of the most contentious issues so the democratic process needed to be transparent. He expressed concern that the Referral Panel was not democratic because Ward Councillors could not express a view but suggested it would be better if the Chairman became the arbiter instead of an Officer. He added that he agreed with Councillor Beavan and a Ward Member and Town/Parish Council should have some power to call in applications to Committee but

queried if it was for the new Council to decide after May. Councillor Gooch agreed the process needed looking at to improve accountability and transparency.

The Chairman stated that he would not support the proposed recommendation because the concern from Ward Councillors was that they felt they did not have sufficient input into the current process, however, the Referral Panel only determined the application's route and Ward Councillors could submit views in the consultation period but most did not, so, as far as he was concerned, that was the issue that needed to be addressed.

Councillor Coulam stated that constituents felt the process was not transparent enough so bypassing Referral Panel and going straight to Committee was more transparent, especially if lots of people complained.

In response to a query, the Democratic Services Officer clarified that if Councillor Beavan's proposed recommendation was agreed by the Committee, the Strategic Planning Committee would receive a report which would include the minutes of this meeting to explain the reasons for the proposal.

On the proposition of Councillor Beavan, seconded by Councillor Byatt it was

RESOLVED

1. That the Strategic Planning Committee in June 2023 be recommended to change the Planning Procedure Rules to allow an application to bypass the Referral Panel process and automatically be considered by the Planning Committee in the event of a "triple lock" style request being received by ALL of the following:

- A Ward Councillor
- The Town/Parish Council
- A Member of the Planning Committee, unless they are also the same Ward Councillor in which case it would be two (Ward Councillor and Town/Parish Council).

2. That, as agreed by the Cabinet Member with responsibility for Planning and Coastal Management, the Strategic Planning Committee in June 2023 also consider amending the Planning Procedure Rules to allow the following:

- If a Member should have a casting vote if the four person Referral Panel is tied 2-2 rather than an Officer deciding.
- If 3 minutes was sufficient time for an objector to speak at Committee.

3. That the Cabinet Member with responsibility for Planning and Coastal Management and Officers provide the Scrutiny Committee with a written response to the following two questions ASAP:

- If it was possible to have another QR code on site notices to take members of the public to a simple guide on what constitutes a relevant planning objection?
- What was the outcome, and were there any further actions arising, from the recent meeting between Officers and SALC in relation to their survey?

6 Scrutiny Committee Annual Report 2022/23

The Committee received report ES/1490 which was the Scrutiny Committee's Annual Report for 2022/23. The Chairman explained that the draft Report would be updated following this meeting and requested that the Committee grant him delegated authority to finalise the document so it could be considered by Full Council on 15 March 2023. Councillor Gooch commented that it was a good report which detailed the Committee's achievements.

On the proposition of Councillor Lynch, seconded by Councillor Robinson, it was

RESOLVED

That delegated authority be granted to the Chairman to finalise the draft Annual Report for 2022/23 to enable it to be considered by Full Council on 15 March 2023.

The Chairman confirmed that there was no forward Work Programme on the agenda because this was the last formal meeting of this four year term. He reminded Committee Members that a review meeting was being held on 20 April 2023 and thanked everyone for attending and their co-operation.

The meeting concluded at 8.50pm.

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Chairman