

Open Letter and Response re. Constitutional Changes - Planning Arrangements for
Kingston Council

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To: Full Council of Royal Borough of Kingston-upon-Thames

cc Grant Thornton

Dear Full Council

I urge you to reject proposals to change planning arrangements in Kingston Council's constitution

The proposed constitutional changes are an insult to Kingston's residents and override all legitimate democratic involvement in and influence in planning decisions.

There has been NO consultation on the proposed changes which will remove democratic involvement in planning decisions.

Power for decision-making will largely be delegated to a single employee of the council, the Assistant Director of Strategic Planning and Infrastructure who happens to be the author of the recommended changes

Under current powers, the Assistant Director for Strategic Planning and Infrastructure (ADSPI) has only a minimal role in neighbourhood committee decision-making. The person has a role in two places; this will be expanded to 15 places, with the ADSPI having power to decide or influence everything

Under the proposals, the person in that post will have largely unconstrained power to influence decisions, their "opinion" able to override all decisions, and this person having to be "consulted" before any decision at all is made

NO DECISION CAN BE TAKEN WITHOUT HAVING "CONSULTED" the ADSPI

This undermines all democratic involvement in planning decision-making

Absolute power for planning is being given to a SINGLE KINGSTON COUNCIL OFFICER and to the person who is the author of the report?

How can this be unbiased and justified?

And why would councillors give one council officer so much power just because they demand it?

Annex One – Part 3A Constitution Responsibility and Functions, Neighbourhood Committees: Recommended Changes

- a. Five Objections (see definition below) to the application have been submitted and the Chair of the Neighbourhood Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration.
 - b. Where the Chair of the relevant Neighbourhood Committee has submitted a Call-In Request (see definition below) and the Chair of the Planning Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration;
 - c. Where all Councillors of the ward within which the application is located or adjoins have submitted a Call-In Request (see definition below) and the Chair of the Neighbourhood Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration;
or
 - d. An application which falls within a Conservation Area and to which the relevant Conservation Area Advisory Committee has submitted a Call-In Request (see definition below) and the Chair of the Neighbourhood Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration.
4. Any planning matter which the Assistant Director of Strategic Planning & Infrastructure wishes to refer to the Committee.

The following powers are of even greater concern:

- If in the opinion of the Assistant Director of Strategic Planning and Infrastructure, in consultation with the relevant Chair, a material

planning objection is overcome by scheme amendment, imposing planning condition(s) or securing planning obligation(s), such an objection no longer counts towards the circumstances that trigger Committee consideration.

Annex Two, Part Three: Responsibility for Functions;

4.2 Planning Committees – Recommended Changes

4.2.2:

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1. To exercise the functions, powers and duties of the Council in relation to Development Management and other related planning matters.
 2. Consultation shall take place with the relevant Neighbourhood Committee prior to the exercise of these powers in those circumstances where the Assistant Director Strategic Planning and Infrastructure, in consultation with the Chair of Planning Committee and the Chair of the relevant Neighbourhood Committee, considers it appropriate to do so.
 3. The Assistant Director Strategic Planning and Infrastructure may bring presentations of developments, that are intended to be submitted as Applications for Planning Permission but are in the pre-application stage or such applications that are in the pre-determination stage, to the Committee.
 4. Recommendations to approve Applications for Planning Permission where one of the following circumstances apply:
 - a. Major Developments (as defined in the Town and Country Planning (Development Management Procedure) (England) Order), other than applications under section 73 of the Town and Country Planning Act 1990 for the variation of conditions on an existing planning permission where the substance of the changes are such that they would otherwise be dealt with under delegated powers;
 - b. The decision would not accord with the provisions of the Development Plan and, in the opinion of the Assistant Director Strategic Planning and Infrastructure, constitutes a Departure;
 - c. The Council is the applicant and either:
 - it is for the development of land in its ownership that the Council intends to grant to a third party any form of right or interest over that land; or
 - in any other case where there is a single Objection (as defined in the responsibility for Functions for Neighbourhood Committees), or the proposal does not comply with the Development Plan; or
 - In any other case, there is a Call-In Request (as defined in the responsibility for Functions for Neighbourhood Committees) and the Chair, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration.
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- 3.9 The following matters are specifically reserved to Planning Committee:
- a. Applications for Planning Permission for a Major development (as defined in the Town and Country Planning (Development Management Procedure) (England) Order
 - b. The decision would not accord with the provisions of the Development Plan and, in the opinion of the Assistant Director Strategic Planning and Infrastructure, constitutes a Departure.
 - c. The Council is the applicant.
 - d. The applicant is an elected member, one of the officer categories specified in the Planning Committee's Responsibility for Functions or a close relative of either of these.
 - d. Where, in the opinion of the Assistant Director Strategic Planning and Infrastructure, the decision would raise issues that are wider than the neighbourhood, have financial implications or be highly controversial.

General reasons why the recommended changes to the Constitution must be refused

The Report recommending the suggested changes to the Constitution is not fit for purpose, is opaque, unclear and – in some places- simply makes no sense. The Report does not allow for meaningful and intelligent consideration of the proposals put forward and therefore it is not possible for Councillors to reach a reasoned decision on the matters contained in the Report.

The proposed constitutional changes as proposed in Point 9 of the document are in places purposefully **opaque** so that residents are not fully able to understand the implications of what is being proposed and in other places specifically and clearly targeted at reducing objections to planning applications. This is clearly in order to prevent existing residents from legitimately stopping plans that have been pushed through by the Council without our knowledge at the time and without our consent. The intention to remove from residents the ability to call in planning decisions without our ability to see it as such through the use of confusing statements is simply unacceptable.

Grant Thornton are meant through their review of Kingston's governance processes, to check that Kingston Council is offering its residents value for money. The council clearly is not doing this and I ask Grant Thornton how long you will allow this situation to continue before you formally make comment on it?

Specific comments

The terms of reference of the Planning Consultant who was hired to conduct the review of the determination of planning applications are not given. This removes transparency from the whole process of reviewing the constitution and renders the process unsound. Why have the terms of reference not been published for clarity's sake?

In point 6 of the Report to Neighbourhood Committees and the Development Control Committee ("DCC") there is no explanation of why the changes are needed. Similarly, in point 7 there is no explanation of the definition of "Applications for Planning Permission". I have never seen this term defined. In fact, the whole of paragraph 7 makes no sense. Paragraphs 8 and 9 are similarly confusing. The lack of clarity of meaning makes it impossible for councillors to make intelligent consideration of the report and to give intelligent and considered responses.

In paragraph 10 of the report, I can see no reason why a pro-forma letter signed by different people should be treated as a single objection. By signing a letter, each person is saying they agree to its contents. This change is not reasonable or justified.

In the bullets points below, it is completely unreasonable and unjustified for the council to intend to limit planning objections to "material planning considerations". In addition, the term is not defined. What may or may not be considered "material" is a matter of opinion. This is neither reasonable nor justified. In any case, objections should not be limited to planning considerations.

Any legitimate objection should be considered, whether it arises from a breach of the democratic process, a breach of consultation principles, a statutory breach of any kind or a breach of the law. Again, the ability to "overcome" any such "material planning objection" is also a matter of opinion and not fact. What does "securing planning obligation" even mean? The term is meaningless:

- It raises objections that are material planning considerations and are related to the application, and
- Any material planning objection raised cannot be overcome by scheme amendment, imposing planning condition(s) or securing planning obligation(s) in consultation with the Chair.

Point 12 and 13 of the report appear to be purposefully confusing and unclear.

There is a ***contradiction*** which will **remove any ability for Ward Members to call in planning decisions at Neighbourhood Committee level:**

Point 11. of the report wishes to restrict any objections to planning applications to those that are made on "material planning grounds". Point 13 then goes on to remove "material planning considerations" as a condition on which Ward Members may call in a decision at Neighbourhood Committee.

This would in effect remove all ability of Ward Members to call in any planning decision at Neighbourhood Committee level. It also means that "material planning considerations" are only considered at DCC.

This means that the voices of councillors who are meant to represent local people in their Wards will never be heard in respect of planning matters. The recommendation is presented in a way that hides its intent and which Grant Thornton and the Council must therefore challenge

Democratic ability to call in planning applications is further weakened in Point 15 where it is suggested that the ability for a planning application to be called in by "five or more Objections" or "Ward members' objections" is REMOVED and replaced by the need for the **approval** of the Chair of the Neighbourhood Committee in consultation with the Assistant Director of Planning and Infrastructure. This concentrates call-in powers at a LOCAL level in two people's hands, one of whom is an unelected official.

This is undemocratic and removes the ability of residents to call-in decisions at local level and effectively removes decision-making power from the Neighbourhood Committee

This is undemocratic and worrying.

The DCC should not have any ability to influence the decision of the Neighbourhood Committee in this way.

Enforcement matters in paragraph 17 should be presented to Neighbourhood Committees as there is no other mechanism for ensuring that the decisions made are the right ones and that appropriate action has been taken. Delegation to officers is unacceptable as it removes transparency and accountability to residents, circumventing Neighbourhood committees

REMOVING powers of Neighbourhood Committees

Point 18a. does not explain which parts of the Terms of Reference are ambiguous or why. This point fails therefore to present an argument on which Members of the Neighbourhood Committee can form a reasoned judgement. This makes the recommendations in point a. unclear, unreasonable and unjustified. Where is the definition of "departure"? There is no evidence that the "legal definition" given is correct. Who will judge if a decision is "contrary to policy but in a substantial or significant way" and on what basis will such a decision be made? This is introducing arbitrary decision making powers that override the democratic process.

What is a planning application that has "financial implications"? This is not clarified and is therefore an unjustified change. Similarly, what is a "highly controversial" planning application? All terms need to be defined in a document that lays out the council's constitution.

Point 18b. Council's own developments

It would be a scandal for the council's own developments to be able to be waved through by council officers under delegated powers. This means that there would be no democratic channel whereby residents can have a say in further estate "regenerations" and "regeneration" on other council-owned land

It is absolutely critical that the council's developments are scrutinised and approved by neighbourhood committees and that they then go to DCC for approval. The council's main stakeholders should be the residents of the Borough and our views should influence decisions made on council owned or controlled land or regarding developments being undertaken on the council's behalf.

Given the proposals to limit what constitutes a valid objection or call-in and the intention to deny the ability for residents and Members to object to planning applications, it is even more shocking and unacceptable that the council intends to give officers the ability to decide on all planning applications that represent the council's own developments. The term "council's own developments" is also not defined.

Point 18 c makes no grammatical sense and also does not present a reasoned or clearly justified

18. Finally, there are three circumstances where it is recommended that matters that might otherwise go to a Neighbourhood Committee should be put before DCC. These are:

- a) Departures from the Development Plan

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Neighbourhood Committees are not allowed to take decisions which are contrary to Council policy (which would include the Development Plan). Currently, the drafting of the Terms of Reference are ambiguous. It is proposed that the ambiguity be removed with more precise drafting. It will be made clear that if the decision constitutes a "Departure" (a term that has a legal definition in planning and means a decision which is contrary to policy but in a substantial or significant way) the matter must go to DCC. Neighbourhood Committees will be able to make decisions that are not fully compliant with policy, but not if the non-compliance is so substantial that it constitutes a Departure.

It is also important to note that decisions which have implications for more than one neighbourhood, have financial implications or are highly controversial should also go to DCC if the matter needs to be determined by Committee.

- b) The Council's own developments in certain circumstances

At present the Council's own developments are routinely presented to Committee. This is not necessary in every case. It is proposed that where there are no objections or Call-In and the application is compliant with the Development Plan the matter can be determined by Officers under delegated powers. In all other circumstances the application would be routed through DCC in order to maintain transparency.

Where the Council is not itself the developer but it wants to obtain planning permission so it can sell the land no delegations will apply and all applications reserved to DCC.

- c) Applications submitted by Councillors and some officers

Similarly, it is proposed that henceforth applications by Members and Officers need not necessarily all be routed through Committee. For transparency purposes, provision needs to be made to ensure that applications submitted by Members and key Officers are determined by DCC. However, this can be limited to circumstances where the applicant is a senior officer (i.e. Service Head and above), Political Group Officer or an Officer who, in the opinion of the AD, is closely involved in the day-to-day work of the Council's planning function, or an elected Member (or a close relative of such), the recommendation is to grant approval *and* an objection has been received or the proposal does not fully comply with the Development Plan.

recommendation. It can not therefore form the basis of any reasoned opinion on the proposal being put to Neighbourhood Committee. In any case, what right should Members and Officers have to make planning applications that do not go through the same route as all other applications for planning permission?

Caroline Shah

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