

<b>Item No.</b> 7.3	<b>Classification:</b> Open	<b>Date:</b> January 30 2008	<b>Meeting:</b> Council Assembly
<b>Report title:</b>		Planning Decision Making – Proposed Amendment to the Constitution	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Regeneration and Neighbourhoods	

## RECOMMENDATION

- 1 That the Council Assembly endorse the recommendations of the Constitutional Steering Panel to the proposals for minor amendments to the constitution to clarify the processes by which applications are referred by officers to be dealt with by Planning Committee or Community Councils.

### Constitutional amendments

**Note:** The changes from the current constitution are indicated with underlining for new text.

**Part 3F: Matters Reserved to the Planning Committee and Community Councils Exercising Planning Functions – pages 58 to 60 of the Constitution.**

#### Planning Committee to consider (p 58):

1. (2) Those which are controversial, i.e. subject to 3 or more relevant objections (a “relevant objection” is defined as any objection except an objection which clearly does not raise any material planning considerations) or raise a major issue of a planning nature except where they are straightforward refusals;

1. (4) All applications for the council’s own developments except for the approval of reserved matters and minor developments to which no relevant objections have been made;

#### Community Councils to consider (pp 59-60):

1. (2) Those which are controversial, i.e. subject to 3 or more relevant objections (a “relevant objection” is defined as any objection except an objection which clearly does not raise any material planning considerations) or raise a major issue of a planning nature except where they are straightforward refusals;

1. (4) All applications for the council’s own developments except for the approval of:

- Reserved matters and minor developments to which no relevant objections have been made; or,
- Developments that are proposed by community councils.

## BACKGROUND INFORMATION

2. There has been a major focus in recent months on improving the service and performance of the planning function. On this basis, an independent Review of Planning was carried out between March and June 2007 and a 40 point Improvement Plan was agreed and is now being taken forward.
3. One of these is the consideration of applications by Members and improved clarity for determining the decision level for planning applications. Planning applications are referred by officers to be dealt with by the appropriate decision maker, i.e. Planning Committee, Community Council or under delegated authority. These are partly based on the numbers of objections raised to an application. For the Council's own developments, any objections will lead to the decision being taken by Planning Committee or Community Council. For other applications, the accepted rule has been that officers cannot use their delegated powers if 3 or more objections have been lodged. Although this specific rule is not in the Constitution, this has become 'custom and practice' in determining whether or not an application should be regarded as 'controversial'.
4. There is no requirement in the Constitution for these objections to be 'valid' planning objections that raise material planning considerations which must be taken into account in the determination of a planning application. So, for example, two applications were recently called in to Planning Committee because some local residents objected to the Council spending £30,000 on double glazed windows. This type of situation puts the decision makers, in this case members of the Planning Committee, in a difficult position as this is not an objection that can be seriously debated or taken into account in the Committee decisions. On this occasion, the 2 items were deferred because of the pressure of other business so this had a double impact on the performance figures.
5. In addition, the objectors who are invited to attend a meeting and address a Committee are sometimes left feeling confused and frustrated as to the process where they have had their expectations raised that their comments will be taken into account and heard by Members, only to find that their comments are not relevant and can't be taken into account.
6. The most straightforward approach would be to amend the constitution to refer to 'objections which raise material planning considerations' rather than just 'objections'. This would bring it into line with the legislation and with what is more common practice among London authorities. The Strategic Director of Regeneration and Neighbourhoods has advised that this should be dealt with it at the next opportunity as an amendment to the Constitution.
7. Specifically this will require minor changes to Part 3F of the Constitution. In section 1(4) (for both Planning Committee and Community Councils), the word 'objections' can be replaced by relevant objections which raise material planning considerations'. An equivalent form of words is proposed under 1(2), in relation to 'controversial' applications, to clarify that this relates to circumstances where '3 or more objections which raise material planning considerations' have been lodged.
8. In addition to improved clarity of process the change will also help in improving performance in determining planning applications by reducing the number of applications that go unnecessarily to Planning Committee or Community Council.

One of the key measures of planning performance is the time taken to determine planning applications. On this overall measure for 2006, Southwark was the lowest performing London Borough. There were several contributing factors to this performance, including the fact that Southwark has a more complicated decision making process than other London boroughs, the decisions being taken not only by a Planning Committee but also by 8 Community Councils. The Planning Committee meets on a 4 weekly cycle. The 8 Community Councils have separate meetings for planning applications and these generally meet on a 6 weekly cycle; the key target for those applications that they consider is the number determined within 8 weeks. There is therefore an inherent problem in meeting the 8 week targets unless the Community Council date happens to follow shortly after the end of the planning consultation process.

## **KEY ISSUES FOR CONSIDERATION**

9. The need for consider minor amendments to the constitution to clarify the processes by which applications are referred by officers to Planning Committee and Community Councils has been specifically discussed with the Executive Member for Regeneration, Councillor Thomas, and the Chair of Planning Committee, Councilor Gurling, who both support the proposed change. It has also been raised at CMT and Executive meetings held to discuss improvements to planning performance and no objections have been raised to the suggestion.

## **Community Impact Statement**

10. This report clarifies existing procedures and processes. As a result there are no specific community impact implications. If the change is agreed, revised guidance and advice will be prepared for members of the public and other stakeholders.

## **Consultation**

11. A report was presented to the community council chairs and vice chairs meeting on January 9 2007. The three main concerns raised were:
  1. who will decide if an objection raises material planning considerations and is there any appeal against the decision?
  2. do we advise objectors that their comments are not material?
  3. why don't we help objectors phrase their comments so that they are material planning considerations?
12. In respect of the first point it was advised that many types of objections had been identified as material or not through legislation, the decision of the courts and in advice and guidance from government and this is what would be used by officers who would be making the decision. It was advised that if the change were to be agreed then a revised procedure note for staff would be prepared and that as now in such matters we would err on the side of caution in making those decisions. Additionally this information would be provided in the consultation letters sent out and on the planning website. There would be no formal appeal. Reference was made to the list of material considerations that had been used in the Member training and that this would form the basis.
13. On the second point it was advised that we do not advise objectors who send in non-material comments that those comments cannot be taken into account.

As raised above we would ensure all those consulted on applications, had information on what constitutes a relevant objection.

14. On the third point members said that we spend plenty of time talking with and helping applicants get their proposals right so why not help objectors get their objections right. It was said that this was not part of the service that is provided, it would have resourcing implications and that the primary responsibility of case officers was determining planning applications and getting them right, where possible, given a general presumption in favour of granting permission unless it was clearly contrary to policy or caused demonstrable harm. It was explained that the website provided information where independent advice could be sought and it was advised that reference to this could also be set out in our revised consultation documents.
15. In addition to the above Cllr. Vineall suggested an amendment to the wording substituting for the phrase "objections which raise material planning considerations" the following:

"relevant objections, a relevant objection is any objection except an objection which clearly does not raise any material planning considerations,"

This point has been taken on board in the amendments to the constitution.

16. The constitutional steering panel, on January 16 2008, agreed to recommend these constitutional changes to the council assembly.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Legal and Democratic Services**

17. Section 70 of the Planning and Compulsory Purchase Act 1990 sets out the matters to be taken into account in the determining of planning applications, and there is substantial case law that sets out where matters are, or are not, material planning considerations. It is considered that such an amendment to the constitution would clarify the situation for officers and members of the public as to which matters would be brought to either Planning Committee or Community Council planning meetings and would result in the appropriate treatment of objections to a scheme where such objections are not relevant planning considerations and therefore cannot be taken into account in considering a planning application. It is recommended that planning officers in writing their reports for decision do record all objections received in the planning reports and additionally include their assessment of whether such objections contain material planning considerations and therefore should be considered as a matter to be taken into account in the decision making. Provided this is recorded in an open and robust manner, there is no objection to the amendments to the constitution as proposed.

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
Southwark's constitution	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Ian Millichap 020 7525 7225
Constitutional Steering Panel - January 16 2008– Report	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Lesely John 020 7525 7228

**APPENDICES**

Appendix No.	Title
None	

**AUDIT TRAIL**

<b>Lead Officer</b>	Richard Rawes, Strategic Director of Regeneration and Neighbourhoods	
<b>Report Author</b>	Phil Chambers, Group Manager Project Management, Development Control	
<b>Version</b>	Final	
<b>Dated</b>	January 17 2008	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
Officer Title	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Legal and Democratic Services	Yes	Yes
Finance Director	No	No
<b>Executive Member</b>	N/A	N/A
<b>Date final report sent to Constitutional Support Services</b>	January 17 2008	