

Legal Advice

I am drawn to the conclusion that the draft Terms of Reference are not 'lawful or correct' as they do not reflect Council's intentions. To explain why, I have set out my reasoning below in plain terms. I have not gone into any elaborate detail about all the legal provisions which apply. I can do so if necessary. What follows is an objective assessment of the current proposals.

- The Parish Council is a statutory consultee in the Planning Process. **The PC is under a legal duty** to submit to the Planning Authority what is called "a substantive response" - No Comment, Comment Only, Object, Support.
- Being a statutory consultee essentially requires a two stage approach by the PC:

First Stage: once Notice of the Application is received by the Clerk to the PC and circulated to councillors - the Councillor(s) with lead responsibility for Planning gather together all relevant information, then consider the application, and next write a Planning Report based on 'material considerations' and which concludes with advice and a recommendation on the 'substantive response.' The Councillor(s) then submits the Report to the Clerk to the Parish Council. (Note: the PC may also at this early stage request an extension of time in which to respond and/or seek further information about the Planning Application from the Local Authority.)

Second Stage: the Report is circulated by Clerk to the PC with the Agenda for PC Meeting to enable Council to make the decision on the form and content of the Report and the 'substantive response' to submit to the Local Authority. Once the decision is made the Clerk submits the response to the Planning Authority.

- The PC now wishes to delegate the Stage 1 process to a Planning Working Party. Stage 2 is not to be delegated but that does not alter the fact that delegation under Stage 1 is proposed.
- Regrettably, though the ALCA advice received recently is broadly correct it is irrelevant as it advises on the position where there is no delegation. It states:

"A Working Group, **without delegated responsibilities** from the Parish Council, can take any form the council wishes it to and does not need to fit the usual statutory requirements of the main Parish Council, as it cannot make any decisions, only recommendations."

And the reverse is true: where the Working Group **does** have delegated responsibilities then it does need to fit the 'usual statutory requirements.'

Note that the term 'delegated responsibilities' does not reflect the actual wording specified by the Local Government Act 1972 which in Part VI Section 101 speaks instead of "arrangements by local authorities for the discharge of functions.

This is the true test to apply: is the PC arranging in whole or in part for the discharge of its functions? Plainly, the answer is 'yes.'

- 'To fit the usual statutory requirements' the PC can set up a Working Party to include councillors and non councillors - effectively a Standing Advisory Committee, but it will require a considerable amount of work to ensure strict compliance with the provisions of the Local Government Act and subsequent legislation. This would include for determination, amongst many requirements, the taking and publication of Minutes and addressing opening its meetings to Applicants, the public and the Press.

Note NALC Legal Briefing NO. 7 which states:

["Councils should be aware that working parties/groups/panels are, in fact, committees or sub-committees within the meaning of the 1972 Act and are, accordingly, subject to the same legal provisions in the 1972 Act as other committees described in paragraph 2 above."](#)

- Were the PC to go down this route it would first need to ensure conformity with its own Standing Orders and have clear and specific Terms of Reference detailing the extent of the delegation of functions. The existing Terms of Reference do not reflect this as they have been drafted on the basis alone of the PC taking full responsibility for planning applications and not delegating responsibility to a Planning Working Group.
- The PC could then Resolve to establish a Working Group and would then Appoint named members of the Working Group and detail Terms of Office, Voting Rights, Conflict of Interest resolution, The Code of Conduct etc etc.
- In all instances I have scrutinised - and they are many and various - the authority to delegate functions has been underpinned by Parish Councils both by their Standing Orders and by clear Resolution and Terms of Reference. In all cases there is acceptance that the full Council has delegated responsibility for the discharge of its functions in whole or in part to a planning committee or subcommittee or advisory committee. If the PC really is determined to pursue this somewhat lengthy and complex course it would no doubt wish to accept and follow recognised practice and establish its Working Group in the tried and tested and lawful way acknowledged by parish councils throughout the land.

Solution

I think that there is an easier way forward.

- The PC should retain full control over the Planning Process and not go down the Working Party Group route. Thus the full Council would in effect continue to operate as the Planning Committee. This arrangement reflects also our existing Standing Orders.
- As I read it, there is nothing to prevent Councillors who are assigned lead responsibility for Planning Applications from taking soundings about the Application from residents of the community provided that they then write up a Report based on their judgment alone while discharging their duty as parish councillors.
- Martin Walker met recently with Craig and Ben to discuss the School's application. But Martin alone will now draw up the Report. Craig and Ben will have no further influence or input into the process. In listening to Martin describe briefly what had taken place it struck me that it was not that far removed from the arrangements that the PC seek to put in place.
- Is that not satisfactory? That exercising our judgment we use or 'sound out' Craig or Ben or indeed anyone else for their views before deciding alone (or with another councillor) on what to put and on what to recommend to the full Council.
- We could then use this resource as and when we think it desirable or necessary. Where dealing with a substantial application which affects the whole community it may well be a useful resource - Freshford Mill, the Pipehouse development, the school's application for solar panels are the type of applications I have in mind. But it is not needed on all occasions - a good recent example is the erection of a polytunnel on a disused piece of land. Would it not be a waste of time and effort to convene a Working Group meeting for such a straightforward application? Most applications are straightforward.
- This proposal is lawful and realistic. It requires no change to the existing arrangements. It has the flexibility to allow for wider consultation. And it provides a pragmatic approach for dealing with planning applications both in the long term and during this immediate period when we will have no Clerk to the Parish Council to discharge a pivotal role in the process. It is not too late to review what is presently under contemplation.

I hope that this solution is acceptable to all in that it offers a way forward to involve non councillors in the planning process without us having to spend a lot of time and effort in seeking to establish a Planning Working Group. If you have any questions on the content or need clarification then do please let me know. I welcome your thoughts and comments.

Nick
25/7/19