

**Teignbridge District Council
Overview and Scrutiny Committee
28 May 2024
Part i**

Notices of Motion relating to Planning

Purpose of Report

To provide a response to the issues raised by Notices of Motion raised at Full Council relating to Planning matters.

Recommendation(s)

The Committee RESOLVES to:

- (1) Note the report and debate the issues in relation to the Notice of Motion
- (2) Make recommendations to Full Council based on the conclusion of the debate

Financial Implications

There are no direct financial implications arising from this report. Please see 3.1 for further detail.

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Legal Implications

There are no Legal implications arising from this report, save that the Council's processes and procedures should recognise the distinct roles of officers and members and operate to mitigate risk to the Council of its decisions and those of its committees being successfully challenged.

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Risk Assessment

Risks are set out in Section 3 of this report.

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Environmental/ Climate Change Implications

There are no environmental or climate change implications arising from this report.

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Appendices/Background Papers

Background Paper 1: [Agenda for Overview and Scrutiny 2 Committee – 9 April 2024](#)

1. Introduction/Background

At the meeting of the Overview and Scrutiny 2 committee of 9 April 2024 three Notices of Motion (NoM) were considered, having been referred from the Procedures Committee.

The full details of those NoMs can be viewed via the link in Background Paper 1.

This report sets out a response to the NoM relating to 'the loss of Section 106 contributions'.

In section 2 the NoM is responded to on a paragraph-by-paragraph basis, with the text of the NoM in italics.

2. Notices of Motion – Loss of Section 106 contributions

NoM: "I would like your support for the following motion, which I believe will improve transparency within the planning process and give councillors more decision making in regards to planning applications and amendments of major developments. It is particularly important that all decisions relating to the loss of agreed 106 affordable units, are made by the Planning Committee.

Response: Each application is dealt with on its merits and the current Constitution allows for applications to be called into Committee.

NoM: Planning is a process tied up in legislation, including the committee decision making element. Councillors are, when an application comes to committee, presented with recommendations, accompanied by detailed reports and are expected to adopt an open mind when deciding on the merits of that

application. Often, the officer presenting the report has anticipated where concerns might lie and along with technical aspects listed conditions that will apply should the application be passed.

On large sites, those conditions might relate to aspects such as the number of affordable homes, children's play areas and green landscaping. Thus, typically, the committee members make a decision based on what is in front of them but in reality the ends product looks nothing like the approved application. That application may then change beyond recognition by a process of amendments, submitted by the applicant and approved by delegated authority. It may never come back to the Planning Committee.

Response: The planning process allows for negotiation and changes to be made. In entering these negotiations in accordance with the provisions of statute, guidance and advice, the officers are discharging the statutory duty of the Council as a Local Planning Authority.

Consideration could be given to requesting a detailed schedule from each application for a variation, specifically identifying every change being requested.

However, it should be noted that this is not a requirement for validating an application or a reason to delay or withhold a decision.

NoM: This is a well-established practice by Developers which enables the Plans to be passed and then amended so that the maximum profit can be achieved. It is called value engineering. I call it disingenuous and it's time it stopped.

Response: No evidence was provided to support this statement in relation to applications within Teignbridge. It has not, therefore, been possible to quantify or qualify the validity of this statement or the scale of the stated problem.

In scrutinising this NoM Members may wish to request further details on the number of applications that this NoM relates to, to allow further investigation of specific cases to understand what the differences in proposals were and why, what the Ward Member and Town/Parish Council views were, and whether there was a request for the application to go before Committee.

NoM: The council are well aware of this process but choose to engage with it for fear of the monetary consequences of non-compliance. It is no secret that this council, along with many others, has an unhealthy dependency on the money provided by major house builders.

Response: No evidence is presented to support these statements or any qualification of what is meant by them.

Planning is a quasi-judicial process which is governed by strict rules, processes, and procedures, along with the council's officer code of conduct to preclude inappropriate behaviour and/or such matters as potential fraud, etc. In addition, the Planning officers of the Council are professional, most are members of the Royal Town Planning Institute and bound by a professional code of conduct. Officers making recommendations other than fully in accord with material planning considerations would be behaving contrary to their professional code of conduct.

NoM: It is time to draw the line and take the first steps to breaking the cycle and distancing ourselves from this unhealthy relationship, by developing a transparent process and sending a clear signal to Developers. We will not be bartering to build houses. Submit, approve, build. We will no longer be engaging in planning ping pong.

Response: Reference to 'unhealthy relationship' has ramifications for the reputation of the Council, and for the officers dealing with applications made under delegated authority. If there are examples of where it is believed that an 'unhealthy relationship' exists and what it is consider this to be, then this should be raised as a specific complaint. If there are not examples, then this accusation should be retracted.

NoM: The motion calls for additional transparency by ensuring that on all major developments (over 20 homes,) where variations to conditions are applied for, must be brought to the planning committee.

This is to apply to all 106 changes and any visible amendments, eg. change of materials, removal of garages, landscaping, etc.

All amendments on the grounds of viability, must come to the Planning Committee. (However, it should be an exception rather than the rule. Viability should covered at the initial planning application stage. If a development is not viable then it should be withdrawn)."

Response: We do not require a viability assessment in support of an application at the initial planning stage unless there is a validation requirement to do so (when the Local Validation checklist is adopted) where it relates to a policy exception i.e., not meeting our affordable housing requirements at submission stage, or the application is seeking that amendment to a S106.

Requiring one to be submitted at the initial planning stage, where one is not required, would result in appeals and costs for unreasonable behaviour through the non-valid application procedure route.

It is for the applicant to decide if a scheme is viable or not. They seek permission and if the scheme is not viable that is the concern of the developer and not for the Council to consider. We cannot refuse an application because we consider the scheme to be economically unviable, that is the risk taken by the developer in bringing forward a development and it must be assumed that they have run a viability assessment before the submission.

If, however, a developer has obtained permission and it transpires that they consider that, for whatever reason the scheme is no longer economically viable they can seek to vary the S106 i.e., a reduction in the affordable housing provision. The developer would have to prove this through the submission of a detailed viability assessment produced by a professionally qualified person. Once received this is then assessed by an independent, professionally qualified, expert appointed by the Council.

Where an application is refused against expert advice it would be difficult to sustain at appeal, as we would be unlikely to get another expert witness to stand against the agreed position of two qualified experts, who would have had to have followed the national guidance and advice in reaching that decision.

Currently this is picked up by paragraph 1.3 of Section 6 of the Scheme of Delegation (Feb 2022 Version 1), which says that applications may not be referred to committee if it concerns a matter of a technical appraisal.

3. Implications, Risk Management and Climate Change Impact

- 3.1 Financial** – There are no direct financial implications from this Notice of Motion. However, the responses do set out situations where the Council may be exposed to costs related to its process or decision making.
- 3.2 Legal** – The Constitution sets out the processes to be followed for calling in a planning application. The issues identified in the Notice of Motion are considered to be adequately covered by the current process.
- 3.3 Risks** – There are no direct risks associated with the Notice of Motion. However, the responses do set out where potential risks may occur.
- 3.4 Environmental/Climate Change Impact** – There are no environmental or climate change impacts in relation to this report or the Notice of Motion.