

OVERVIEW AND SCRUTINY COMMITTEE – TASK AND FINISH PANEL

Work Plan Item 5 - Change to process of calling a planning application to Planning Committee for a decision.

Panel Members: Cllrs Hughes (lead), Crellin, Howard, Kennett, Lloyd & Milne.

Draft Recommendations:

- *That Havant Borough Council should re-instate the ‘red’ card system for elected members.*
- *That the Overview & Scrutiny Committee invite the Constitution Sub-Committee¹ under the Standards Committee to determine the best mechanism to achieve this.*

Timing:

- The restoration of the ‘red card’ system should be achieved at the earliest opportunity.

Background:

- Havant Borough Council employed a ‘red card’ system, that enabled elected members to request that a specific planning application be brought before the Development Management Committee (DMC)/Planning Committee for consideration, rather than determined by officers under delegated powers. It was used sparingly. Analysis of all planning applications considered by the DMC/Planning Committee from Jan 2017 – Jun 2021 (Appendix A), reveals that of 77 applications brought before the committee, 30 were as a result of elected members exercising their ‘red card’ entitlement. Appendix B provides in-depth information of the specific application, which member requested that it be brought before the committee and the location.
- In March 2021, Havant Borough Council formally adopted a new constitution (dated January 2021). One of the primary aims was to align the constitutions of East Hants District Council (EHDC) and HBC. EHDC do not operate a ‘red card’ system. As part of that review, Part Two, Section E1 – Non-Executive Committees – Planning Committee, incorporated the following sub-paragraphs:

2.25 Where, within four weeks of its receipt by the Council, or within seven days of being notified that it is intended to grant permission for an application:

(a) Where five or more individual letters - each raising material planning objections have been received by the Council; and

(b) The local ward Councillor (or in the absence of the local ward Councillor the Chairman or Vice Chairman of the Planning Committee) requests in writing to the Head of Planning, giving good material planning reasons, that the application be determined

¹ Comprising Cllrs Turner, Shimbart & Patrick

by the Planning Committee and the referral is agreed by the Chairman of the Planning Committee, the Head of Planning and the Cabinet member with portfolio responsibility for Planning.

- There was no reference to the 'Red' Card 'entitlement' of elected members in the old version of the Constitution. As there was no direct reference to the 'Red Card', in the new version, it was assumed that the sub-paras 2.2.5 (a) & (b) were merely providing additional democratic accountability to the planning process (particularly sub-para (a)), **not removing** the previous 'inherent' right exercised by elected members, which had been established by 'custom and practice'. Had elected members been consulted on the proposal to remove the 'red' card, it is felt highly likely that it would have been refused.
- The Joint Constitution Working Group had four participants from each authority. The HBC members were Cllrs: Bowerman, Howard, Patel & Bowerman. An email was sent to all members asking if they recall any discussion surrounding the removal of the 'red' card? While it is noted that the last meeting of the Joint Constitution Working Group took place in November 2019, and memory dims with the passage of time, responses received to date indicate recollection of the discussion over the 'five letters' from residents, but no specific conversation or deliberation of the status of the 'red' card entitlement for elected members. EHDC does not have a 'red' card system.
- Sub-para 2.2.5(b) 'could' be interpreted as a 'red' card entitlement for elected members. However, even if it was, it would be a dilution of the previous entitlement as prior approval of the Portfolio Holder for Planning AND the Planning Committee Chairman would be required before it was heard by the committee. Another anomaly within the revised Constitution is that without the full 'red' card entitlement, there is no mechanism for elected members to challenge delegated decisions taken by officers. For example, if an officer was minded to refuse an application, under the old scheme, an elected member could request that it was brought before the DMC/Planning Committee for their deliberation. It would also enable a deputation, outlining an alternative recommendation to be made to directly to the committee for consideration under an amendment. This no longer exists under Sub-para 2.2.5(b).
- Other local authorities have documented procedures for exercising a 'red' card function by elected members. Chichester District Council exercises a 'Red' Card procedure (See Appendix 3), even though there is no reference to it in their constitution.
- It is the Panel's belief that if consulted, elected members would wish to have the 'red' card system entitlement fully restored. It is not for the Overview & Scrutiny Committee to determine the best method for achieving this. It wasn't constituted previously, does it need to be? If it does, then the Standards Committee should be invited to add this to their workplan.

Appendix A – Planning Applications v Red Card Jan 2017 – Jun 2021

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL Red cards
2017	3_3	2_1	2_1	1_0	3_1	3_0	3_2	2_1	1_0	1_0	1_1	1_0	10
2018	1_1	2_0	1_0	1_0	3_2	2_0	n/a	2_0	3_0	3_2	n/a	1_1	6
2019	3_2	n/a	1_0	n/a	1_1	n/a	2_0	1_1	n/a	2_2	n/a	n/a	6
2020	n/a	n/a	2_0	n/a	n/a	1_1	1_0	1_1	1_1	1_0	1_0	2_0	3
2021	1_1	2_0	2_1	2_1	5_2	3_0	n/a						5
77	8	6	8	4	12	9	6	6	5	7	2	4	30

Two meetings of the DMC were convened in October. However, one was for the consideration of a paper relating to deputations.

Two meetings held of the Planning Committee in June 2021. Items were considered at both meetings.

Appendix B – Details of ‘Red’ cards

2017

Jan	APP/16/01200	ClIr Guest	The Parchment – TPO
	APP/16/01199	ClIr Guest	The Parchment – TPO
	APP/16/01113	ClIr Cresswell	23 South Street, Emsworth
Feb	APP/16/00921	ClIr Cresswell	Dolphin Quay, Emsworth
Mar	APP/17/00101	ClIr Keast	20 Summerhill Road
Apr	N/A		
May	APP/17/00233	ClIr Buckley	32 Wallis Road
Jun	N/A		
Jul	APP/17/00388	ClIr Turner	128-130 Sea Front, HI
	APP/17/00352	ClIr Perry	1 Hawthorne Grove, HI
Aug	APP/17/00025	ClIr Wilson	139 Em Grove, HI
Sep	APP/17/00529	ClIr Lenaghan	380 Sea Front, HI
Oct	N/A		
Nov	APP/17/00928	ClIr Wilson	16 Langstone High Street
Dec	N/A		

2018

Jan	APP/17/00633	ClIr Creswell	Orchard House, Western Ave, Emsworth
Feb	N/A		
Mar	N/A		
Apr	N/A		
May	APP/18/00134	ClIr Turner	Fair Acre, Church Lane, HI
	APP/18/00151	ClIr Bowerman	48 Havant Road, Emsworth
Jun	N/A		
Jul	N/A		
Aug	N/A		
Sep	N/A		
Oct	APP/18/00706	ClIr’s Pike & Branson	39 West Street, Havant
	APP/18/00736	ClIr Guest	The Parchment – TPO
Nov	N/A		
Dec	APP/18/00929	ClIr Creswell	Southdown View, Long Copse Lane, Emsworth

2019

Jan	APP/18/01234	ClIr Pike	39 West Street, Havant (Resubmission of 18/00706)
	APP/18/00985	ClIr Wilson	3 Lexden Gardens, HI
Feb	N/A		
Mar	N/A		
Apr	N/A		
May	APP/18/01228	ClIr’s Wilson & Scott	Stoke Farm, Northwood Lane, HI
Jun	N/A		

Jul	N/A		
Aug	APP/18/00450	ClIr Gary Robinson	land at Forty Acres, Bedhampton
Sep	N/A		
Oct	APP/19/00625	ClIr Gwen Robinson	62 Ferndale, Waterlooville
	TPO 2091/2019	ClIr Hughes	64B Stakes Road

2020

Jan	n/a		
Feb	n/a		
Mar	APP/19/01131	ClIr Turner	Land adj Mandai, St Peters Road, HI
Apr	n/a		
May	n/a		
Jun	APP/20/00123	ClIr Bowerman	5 Orange Row, Emsworth
Jul	n/a		
Aug	APP/19/00324	ClIr Scott	507 Station Road, HI
Sep	APP/18/01033	ClIr Pike	Land East of, Castle Avenue, Havant
Oct	n/a		
Nov	n/a		
Dec	n/a		

2021

Jan	APP/20/00696	ClIr Patrick	162 Stakes Hill Road, Waterlooville
Feb	n/a		
Mar	APP/20/01180	ClIr Sceal	193 London Road, Waterlooville
Apr	APP/20/00699	ClIr's Turner & Wilson	2 Eastoke Ave, HI
May	APP/20/00376	ClIr Kennett	Fowley Cottage, 46 Warblington Road, Emsworth
	APP/21/00075	ClIr Scott	3 Westmead Close, HI
Jun	n/a		

Appendix 3 – Principles of Red Card Use – Chichester District Council

Red Card Procedure – Code of Practice

[Revised July 2013]

1. Under the Council's delegated powers arrangements the Executive Director of Environment has delegated power to determine applications except in specified circumstances including 'Where a Member of the Council makes a request to the appropriate employee, in accordance with the procedure prescribed for that purpose, that an application should be determined by the [Planning] Committee'. The prescribed procedure is known as the red card procedure. The objective is to ensure that the decision on a particular application is taken by the Planning Committee not an officer. Since decisions at committee-level are appreciably more expensive than officer-level ones and inevitably result in a delay to the application the following principles apply.
2. Members should only submit red cards when there is a sound reason why an officer-level decision is insufficient. This would normally arise when the proposal is for a major development, when there is an exceptional level of public interest or when the member has information or an opinion which s/he wishes to raise in debate. The red card procedure allows the member to require an application to be reported to the Planning Committee for determination.
3. The red card includes a space for the member to indicate why a committee decision is necessary. This will be based on his or her preliminary view of the application and will not be treated as an indication of the member's final view. Members should always complete this section, bearing in mind that the document will become public and the reason reported to the Planning Committee.
4. Members should limit to the absolute minimum the number of red cards submitted.
5. Members should consider carefully whether it is appropriate to submit a red card in respect of householder applications (suffix DOM), having regard to the advice in paragraph 2 and should be satisfied that it is justified on the basis of the particular circumstances of the case.
6. Where a member does decide that s/he wishes the application to come to committee, then a red card should always be submitted. S/he should not rely on a telephone conversation with the officer, although such conversations are often helpful to both members and officers and are to be encouraged where necessary in the interests of good member-officer relations
7. Requests for a committee-level determination may be made by applicants, objectors, agents and parish councils. Members should not accede to such requests solely because they have been asked to do so. Members should not, under any circumstances, forward red cards to another party e.g. a

parish council or an agent. Indeed such an event is an abuse of the procedure and can introduce uncertainty as to whether powers remain delegated to the officers.

8. If circumstances change after a red card has been submitted the member should withdraw the card either in writing or by phoning the relevant Development Manager or the Assistant Director of Development Management and Building Control (not the case officer), who will then note the file accordingly.

9. A member who has submitted a red card should normally be present at the committee meeting when the item is discussed and be prepared to explain the reasons for requiring a committee decision (with the chairman's consent if appropriate).

10. The red card should not contain any comment, representation or other communication other than the instruction as to the procedure for determining the application together with the reason.

11. Red cards may be sent for any application but members should note the caveat in the delegated powers arrangements to the effect that the red card procedure will not apply where there are statutory periods for determination of prior approval and similar applications and there is no Planning Committee meeting available within this period. Under such circumstances where a red card is submitted and there is insufficient time for determination by committee, the officers will seek to contact the member by telephone to discuss the scheme.

Administrative Procedures for Red Cards

1. A red card may be submitted by any member of the Council; members do not have to sit on the Planning Committee. Council members who are not on the Planning Committee would normally be expected to attend the Planning Committee meeting to speak (with the chairman's agreement) on an application they had red-carded, in accordance with principle 9 above.
2. The red card may be submitted at any time before the determination of the application by the authorised officer i.e. before the officer signs the decision preview sheet. It is, however, administratively convenient if the red card is submitted early in the application cycle, normally within the first 21 days.
3. A separate red card should be submitted for each application. If the application number is not known, then a description of the development as well as the address of the site should be written on the red card.
4. Red cards should be submitted electronically via the Members Desktop within the (*Virtual Private Network*) VPN.
5. The red card will become a public document and will appear on the electronic file. Reference to it will be made in the officer's report.