

Fews  
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Ltd

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Dear Parish Councillors

**Re: Status of the planning delegation scheme at South Cambridgeshire District Council**

It is regrettable that it has become necessary once again for me to write to parish councils in regards to the illegality of the planning delegation arrangements in place at South Cambridgeshire District Council.

As you will be aware, the legality of the planning delegation scheme in use at the South Cambridgeshire District Council has been challenged by the Fews Lane Consortium in litigation currently pending before the High Court.

The reason for Consortium's initial legal challenge was that planning delegation decisions were being taken unlawfully by the chair of the planning committee at unannounced meetings, from which the public were excluded and for which no agendas or minutes were published, in a violation of section 101 of the Local Government Act 1972.

In response to the Consortium's legal challenge, on 4 February, officers published a proposal to change the council's planning delegation scheme contained in the council's constitution to bring it into compliance with section 101 of the Local Government Act 1972.

On 12 February, the district council's planning committee voted 5–4 to approve a resolution proposing to change the council's constitution by removing all powers to call-in planning applications from elected councillors and parish councils and instead to transfer those powers to the council's joint director of planning.

On 17 February, without the proposed changes ever having been approved by the full council, officers published an updated copy of the constitution on the council's website including the changes that had been proposed in the resolution adopted by the council's planning committee on 12 February.

Under Part 1A of the Local Government Act 2000, local authorities are required to make and to keep up to date constitutions that set forth their governance arrangements, and pursuant to section 9R(6) of Part 1A of the 2000 Act, local authorities do not have the legal power to delegate the authority to make or update their constitutions to their committees, sub-committees, or officers.

The Consortium has taken legal advice on this matter and has been advised that the purported change to the planning delegation procedure contained in the district council's constitution was *ultra vires* and has no legal effect. **Therefore, the original planning delegation scheme, itself unlawful, that was contained in the district council's constitution prior to 12 February 2020 is still legally operative and is fully in effect.**

What does this mean in practical terms of parish councils?

If your parish council or local district councillor feels that a planning application should be considered by the planning committee, a written request should be submitted to the district council for the application to be determined by the planning committee.

If, after receiving a request, the application is determined by an officer, and if it is possible that the outcome of the decision could have been different if it had been determined by the planning committee, then it would be possible to challenge the legality of the final decision through judicial review once it the final decision is issued.

As the Consortium already has legal proceedings underway, it would be helpful for us to know which parishes are being effected by this issue. It may also be possible to challenge further decisions in the same proceedings, which could have the advantage of greatly reducing the costs typically associated with judicial review proceedings.

If your parish council does make a request for a planning application to be determined by the planning committee, that request is a matter of public record, and it would be tremendously helpful if an individual could write to the Consortium at the email address at the top of the first page of this letter letting us know the application reference number, the date of the parish council's request, and whether the parish council's recommendation was approval or refusal.

As decisions of parish councils are matters of public record, the email can be sent by any one, including the parish clerk or a parish councillor. If you do email the Consortium, please be assured that no personal information will be shared or disclosed in any way.

You will find enclosed a chronology summarising the developments on this issue as they have occurred over the past year and a half.

As always, if you have any questions, or if I can be of assistance in any way, please do not hesitate to contact me.

Kind regards

Daniel Fulton  
Director

### **Chronology: Changes to the planning delegation scheme at South Cambs District Council**

5 September 2018	The leader of the district council, its cabinet, and the joint director for planning and economic development are made aware of the problems with the council's delegation scheme for planning applications. The leader of the council asks the joint director to undertake a review of the planning delegation scheme, but that review apparently never takes place.
November 2018 to May 2019	The Fewes Lane Consortium contacts the council and the council's solicitor multiple times in regards to the apparently illegality of the planning delegation scheme, but still, no action is taken by the council.
3 December 2019	Officers attempt to insert a change into a revision of the council's constitution to transfer all planning delegation decisions to a single unelected officer, the joint director for planning and economic development. This change is not mentioned in the officers' report to the committee, nor is the significance of the change explained. Instead, the change is only mentioned on a single line deep within a 900+ page agenda for the council's civic affairs committee.
Early January 2020	The Fewes Lane Consortium sends out a letter to parish councils informing them of the proposed change to the delegation arrangements.
8 January 2020	The leader of the district council, Cllr Bridget Smith, writes to parish councils apologising for not having informed them of the proposed changes to the planning delegation scheme. In her letter, Cllr Smith promised that the council's planning delegation process would remain unchanged and that elected councillors would continue to play the same role in the planning delegation process that they have in the past.
4 February 2020	A proposal in line with the leader's promises to parish councils is published in the agenda for the planning committee to consider at its meeting on 12 February.
the evening of 11 February 2020	The night before the planning committee is to meet, the proposal published in the agenda on 4 February is withdrawn and replaced by six new planning delegation proposals to be considered by the committee, none of which honour the promises made by the leader of the council.
10:30 a.m. on 12 February 2020	The district council's planning committee meets, and although members of the committee are universally angry at having been given insufficient time to consider the six new proposals, the committee votes 5–4 to approve a proposal to remove all powers to call-in planning applications from elected councillors and parish councils and instead to transfer those powers to the council's joint director of planning—exactly the opposite of what the leader of the council promised would happen in her letter of 8 January.
17 February 2020	The district council publishes an updated copy of its constitution on its website in which the changes proposed by the planning committee have been incorporated into the council's constitution despite never having been approved by the full council as is required pursuant to section 9R(6) of the Local Government Act 2000. Accordingly, the old planning delegation scheme, itself unlawful, continue to remain legally operative and in effect.