



Report of the Assistant Chief Executive (Corporate Governance)

Corporate Governance and Audit Committee

Date: 15 November 2010

Subject: Judicial Review – lessons learned

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report informs Members about the outcome of the case Technoprint Plc and Snee V Leeds City Council, a judicial review of a decision to grant planning permission. Judgment was given against the Council, on the basis that the decision was unreasonable or irrational.
2. The claimants also alleged that at the time the planning permission was granted, the Council had no valid scheme for delegating the power to grant planning permission to any of its officers. However, this challenge was not successful.
3. The Joint Plans Panel reviewed the planning aspects of the case, at their meeting on 23 September 2010. (Appendix 1 to this report is the report considered at that meeting).
4. This report focuses on the wider governance implications arising from the case. Specifically, these are:
 - the process for agreeing the Council's scheme of officer delegation; and
 - the provision of documents to be considered at the Annual Meeting, after the dispatch of the summons.
5. The report recommends that the Committee note the steps outlined in the report which are proposed or have been taken by the Assistant Chief Executive (Corporate Governance) to improve the governance arrangements for these matters.

1.0 Purpose Of This Report

- 1.1 This report informs Members about the outcome of the case Technoprint Plc and Sneer V Leeds City Council, a judicial review of a planning decision. The report focusses on the implications for the Council's governance arrangements, and identifies improvements which have or should be made, to current practices.

2.0 Background Information

- 2.1 On 15 February 2010, the High Court quashed planning permission granted by Leeds City Council for a development of 12 flats, with associated parking, at Wide Lane, Morley.
- 2.2 The decision to grant planning permission had been taken on 7 February 2008, by a principal planning officer under the Chief Planning Officer's delegation scheme.
- 2.3 The challenge to the decision was made on a number of different grounds. Judgment was given against the Council, on the basis that the decision had been unreasonable or irrational. On 23 September 2010, the Joint Plans Panel received a separate report on the case, outlining the planning aspects in detail. This is attached for information as appendix 1 to this report.
- 2.4 As part of their case, the claimants alleged that at the time the planning permission was granted, the Council had no valid scheme for delegating the power to grant planning permission to any of its officers. Consequently, they alleged that the officer was not authorised to make the decision to grant the planning permission.
- 2.5 The claimants did not succeed with the challenge to the delegation scheme itself. However, in view of the publicity about the case, and the costs incurred in defending it, it is appropriate for this Committee to receive further information about the wider governance implications of the case

3.0 Main Issues

Agreeing the Council's officer delegation scheme

- 3.1 The Council Procedure Rules provide that the Council's annual meeting will "agree the scheme of delegation or such part of it as the Constitution determines it is for the Council to agree...".
- 3.2 It was accepted by the Council that between 12 December 2001 (when the constitution was first adopted) and the Annual Meeting of the Council which took place in May 2008, the Council did not **expressly** and discreetly agree the whole delegation scheme relating to council functions, by resolution. Instead, the Council adopted the practice of approving any variations or amendments to its Constitution at the Annual Meeting, following consideration by the Constitutional Proposals Committee (now the General Purposes Committee) – as required by Article 15.
- 3.3 The claimants alleged that no valid delegation scheme was in place in February 2008, when the planning permission was granted, because the whole scheme had not been expressly approved at an Annual Meeting.
- 3.4 Members will note that if this argument had succeeded, then other decisions taken by officers under the Council's delegation scheme relating to Council functions could have also been subject to challenge on the same basis. (The challenge would not,

however, have extended to decisions taken by the officers on behalf of the executive).

- 3.5 Mr Justice Wyn Williams gave judgment in the case. He found that the meaning of “agree” in the Council Procedure Rules “encompasses agreement by express words, by conduct or by a combination of both”. He therefore concluded that the Council was not required to agree the whole delegation scheme expressly by resolution.
- 3.6 Further, he added that the Council “has adopted and applied a perfectly sensible means of amending its Constitution as and when necessary since its adoption in 2001.”

Circulation of documents at the Annual Meeting

- 3.7 The Council’s position was that at the Annual Meeting in 2003, the Council delegated powers to the newly created post of Chief Planning and Development Services Officer, and that the decision to grant permission was made under this continuing authority in 2008. However, the claimants raised a secondary issue about the circulation of documents at the Annual Meeting in 2003.
- 3.8 The claimants asserted that relevant documentation (the minutes of and the report to the Constitutional Proposals Committee about amendments to the constitution) had not been circulated before the Annual Meeting. They claimed that this amounted to a failure to comply with Section 100B of the Local Government Act 1972, and submitted that as a consequence, the resolution to approve the scheme of delegation was invalid, and no delegation scheme had been approved.
- 3.9 The Council accepted that the documents had not been circulated with the summons 5 clear days before the meeting, but stated that they were provided to Councillors before the meeting.
- 3.10 Mr Justice Wyn Williams noted that the requirement in Section 100B that reports shall be made available for public scrutiny at least 5 clear days before a meeting, is subject to a provision that reports need not be made available for inspection by the public until copies are available to Councillors. He also noted that there is no requirement that the reports be made available to Councillors at least 5 clear days before the meeting.
- 3.11 Mr Justice Wyn Williams was not satisfied as a matter of fact, that reports were not placed before Councillors either prior to or at the meeting. But in any event, on his interpretation of the law, he found no basis for a breach of Section 100B.

Chief Planning Officer’s delegation scheme

- 3.12 The claimants were not successful in their challenge to the validity of the delegation scheme. However, in any event, at its meeting of 23 September 2010, the Joint Plans Panel resolved that the current delegations to the Chief Planning Officer should be reviewed by a planning member-officer working group, to ensure that they are appropriate.
- 3.13 It was agreed that the working group’s finding should be reported to the relevant Panels / Committees, with the aim of presenting the outcome and any recommended changes to the delegation scheme to full Council in January 2011.

- 3.14 A particular concern was that under the current scheme of delegation, Ward Councillors have 21 days from notification to request an application to be referred to Panel. It was considered that this time period is too short. The same period of 21 days, is given by statute for local residents to comment on an application. Accordingly, it was felt that this period does not allow a Ward Councillor sufficient time to consider the views of the local community, in deciding whether an application should be reported to Panel or not.

4.0 Implications For Council Policy And Governance

- 4.1 Since the Annual Meeting in 2008, the Council has expressly approved its entire scheme of delegation at each Annual Meeting. That is, the entire Council scheme of delegation relating to Council functions is now circulated as a schedule to the summons, and a resolution passed expressly to approve the scheme. This practice was introduced to promote greater transparency. Also, the approval for each delegation is more readily demonstrable, as dating back at the latest to the last Annual Meeting.
- 4.2 In relation to circulating documents before the Annual Meeting, due to restricted time-scales (particularly where elections have been held shortly beforehand), some schedules to the summons only become available for circulation after the issue of the summons.
- 4.3 The Assistant Chief Executive (Corporate Governance) recognises that to promote transparency, papers ought to be dispatched either with the summons, or as swiftly as possible after that. With this in mind, the Head of Governance Services achieved significant improvements in the speed at which schedules were circulated, at the Annual Meeting in 2010. This was achieved by streamlining administrative processes and focusing on how key officers consult and co-ordinate with relevant Members.
- 4.4 The issue of circulation of documentation after dispatch of the summons also arises in relation to Ordinary Council Meetings, and may arise in relation to committees. Instructions have therefore been given to Governance Services staff responsible for supporting meetings, to record additional information which becomes available after agenda or summons dispatch, and when it is published and circulated.
- 4.5 To further improve transparency, Chairs of committees, and the Lord Mayor (at Council meetings) have been asked to announce and make clear any papers in addition to the published agenda and reports which are before Members for consideration. These announcements are drafted for the Chair and Lord Mayor by the Governance Officer supporting the meeting, and reflected in the minutes for the meeting in question.

5.0 Legal And Resource Implications

- 5.1 The requirement for the Council to agree its delegation scheme relating to Council Functions at its Annual Meeting is set out in Council Procedure Rule 1, and is not a statutory requirement. The provision follows the model standing orders provided by the DCLG in 2001 when the constitution was drafted.
- 5.2 The judgment confirmed that the Council's practice of approving the scheme by way of approving amendments and variations, rather than as a whole, discharged the requirement to agree the scheme set out in Council Procedure Rule 1.

- 5.3 In relation to the circulation of additional information after the dispatch of the summons, the judgment concluded that the Council had not breached the provisions of Section 100B of the Local Government Act 1972.
- 5.4 The costs of defending this case are set out in the attached report to Joint Plans Panel.

6.0 Conclusions

- 6.1 Although judgment was given against the Council, the challenge to the validity of the delegation scheme was not upheld.
- 6.2 In any event, since 2008, the Council has explicitly approved the whole delegation scheme for Council functions, at the Annual Meeting.
- 6.3 In relation to the circulation of documents, the Council has complied with the legislation relating to the circulation of documents after the dispatch of summonses. In any event, steps have been taken to improve the transparency of the process.
- 6.4 Although not a direct consequence of the case, a review has been initiated by the Joint Plans Panel, into the terms of the current officer delegation to the Chief Planning Officer.
- 6.5 The process for the annual review of the constitution is also being revised, to ensure that relevant Members are able to fully contribute where they have a particular interest. At present, the annual review is mostly carried out by consulting with relevant Directors. However, the Head of Governance Services will ensure that in future, relevant Members for specific functions such as planning, are specifically requested to feed into the review process for delegation schemes, and other documents relevant to their remit.

7.0 Recommendations

- 7.1 Corporate Governance and Audit Committee are asked to note the outcome of the case Technoprint and Mark Snee V Leeds City Council, in relation to the governance issues arising.
- 7.2 The Committee are asked to note that the Joint Plans Panel have considered the planning issues arising from the case, and that the Panel have initiated a review of the delegation to the Chief Planning Officer.
- 7.2 In relation to the issues relating to the wider governance arrangements raised by the case, Corporate Governance and Audit Committee are also asked to note the steps proposed or already taken by the Assistant Chief Executive (Corporate Governance) to improve the governance arrangements relating to:
- the approval of the delegation scheme relating to Council functions; and
 - the provision of documents outside the 5 clear day notice period.

8.0 Background Papers

- 8.1 High Court judgments 9 December 2009 and 24 March 2010, Technoprint Plc and Mark Snee V Leeds City Council.