

Planning Protocol

1. What is the protocol for?

- 1.1. This protocol sets out to ensure that there is transparency in the decisions made surrounding planning matters, and is to be followed in conjunction with the rules already set out in the Council's Constitution, particularly Section 4, Part 4B.
- 1.2. Councillors must follow this protocol whenever they have contact with the planning application process, including as a Planning Committee member, as a Ward Councillor at Committee, and on less formal occasions, such as meetings with Officers, the public, and pre- application and consultation meetings.
- 1.3. This protocol applies to planning enforcement matters or site-specific policy issues as well as planning applications.

2. Your role

- 2.1. When determining a planning application there is an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek to judicially review the decision and/or complain to the Ombudsman on grounds of maladministration, or a breach of the Council's Constitution.
- 2.2. Decisions taken at Planning Committee should be made in accordance with the statutory development plan unless material considerations suggest otherwise.
- 2.3. The basis of the planning system is the consideration of private proposals against wider public interests. When participating as a Planning Committee member, Councillors must act in the interests of the whole borough rather than prioritising the interests of their own Ward.

3. Interests, bias, and predetermination

- 3.1. All members must ensure that they maintain their register of interests, as set out in the Council's Constitution.
- 3.2. As with all Council decisions, there must not be an appearance of bias in either the decision or how it was reached.
- 3.3. Planning Committee members with a disclosable pecuniary interest (as outlined in Section 5, Part 1 of the Constitution) in an item must leave the room for the duration of the representations, discussion, debate and the vote on that item as their presence could be seen to influence the decision of the Committee.
- 3.4. Expressing a view prior to a meeting does not automatically suggest a matter has been predetermined, this could be viewed as a predisposition. In determining whether they can approach the meeting with an open mind, Committee members should also consider whether a fair minded and informed observer, having considered the facts (including

email exchanges), would consider that there was a real possibility that they were biased.

- 3.5. If there is any question as to whether they can approach the meeting with an open mind, but Committee members believe that they can, they should make a declaration at the meeting clearly explaining why they have a predisposed but not predetermined view. This should be reflected in their approach to and participation in the debate at the meeting.
- 3.6. If a Committee member decides that they do have a predetermined view then they must leave the room for the duration of the representations, discussion, debate and the vote on that item as their presence could be seen to influence the decision of the Committee.
- 3.7. Declarations of Interest rules must be adhered to, and all Councillors must raise any doubts with the Monitoring Officer. There may be interests that members feel would not affect their decision, but, as above, a fair minded and informed member of the public may feel it would affect their decision. On these occasions Councillors should consider whether there could be an appearance of bias.

4. De-delegation

- 4.1. Ward Councillors can de-delegate planning applications in their ward. De-delegation is where a Councillor seeks to require that a decision delegated to Officers under the Council's Scheme of Delegation (set out in Section 3 of the Constitution) is instead taken by the committee, thus removing the delegation. Members wishing to de-delegate an application must do so in consultation with the Head of Development Management & Strategic Planning, or the Planning Manager in their absence. This is to ensure that there is an opportunity for any concerns to be overcome before prompting a decision by Committee.
- 4.2. Any Councillor wishing to de-delegate a planning application from the weekly list of planning applications must do so in writing, by letter addressed to the Head of Planning or e-mail sent to the e-mail address dedicated for this purpose. The request to de-delegate must be received within 21 days of the date letters are sent to local residents notifying them of the application. Anything received after the 21 day period will not be accepted unless information missing from the original application is provided later which may extend the consultation period. For major applications, and those including an Environmental Impact Assessment, which are considered in 13 and 16 weeks respectively, a longer period may be necessary depending on the complexity of the application and the amount of supporting information that is included. In such cases a longer period of up to 35 days to respond is considered appropriate.
- 4.3. A notice for de-delegation must include reasons, on planning grounds, why the particular planning application is being de-delegated. Those reasons will be included in the report when the Planning Committee considers the planning application. Suggested phrasing for requests to de-delegate:-

"I would like to de-delegate application (give reference number) on grounds of its (give reasons). If you are minded to recommend refusal of this application please take this

[letter] [email] as my agreement that the application can be re-delegated to Officers for a decision”

- 4.4. Planning Committee members are entitled to make representations to the Committee on an item they have de-delegated in their capacity as a Ward Councillor, though they will need to stand down from membership of the Committee for the purposes of that item. A Councillor can either act as a Ward Councillor or a Committee member for this item. If a Committee member makes representations on an item, they must leave the room after speaking and cannot take part in the discussion, debate, or vote. Moreover, they must provide the Chair and the Clerk to the Committee with at least three working days notice of their intention to make representations.

5. Preparation

- 5.1. Councillors should endeavour to take part in pre-application discussions where it is felt that their input and engagement could improve the quality of the resultant scheme and reduce potential delays. Taking part in pre-application discussions gives Councillors the opportunity to ensure that new development meets the aspirations they hold as community representatives. For Ward Councillors it is important to have the right information about proposals in their area in order to be more effective community representatives.
- 5.2. Planning Committee members will take decisions on planning applications, balancing their community leadership role with the need to keep an open mind prior to decision making. This does not mean that Committee members should avoid participation in pre-application discussions, as a better understanding leads to more informed decision-making.
- 5.3. Members of Planning Committee should not, except in exceptional circumstances after having obtained guidance from Officers, take part in their own separate pre-application discussions with developers, or have other separate meetings with persons interested in a current or potential planning application. In such circumstances, discussions should only take place at an event or meeting arranged and attended by Council Officers. The expressions “developers” or “persons interested” should be interpreted widely and include applicants, landowners, objectors, persons affected, potential competitors and rivals, and persons acting on behalf of such persons. Such meetings may make it difficult to maintain impartiality and the appearance of impartiality.
- 5.4. Planning Committee members should visit a site before an application comes to the Committee meeting. Where individual members of the Committee wish to undertake their own site inspection prior to the Committee meeting, these should be conducted unannounced and from a member of the public’s vantage point. Members of the Committee should not arrange to meet applicants/agents, objectors or third parties for the purpose of a site inspection. If a Committee member is approached on site by any applicant/agent, objector or other third party interest they should seek to avoid discussion of the application and should ensure they do not give any indication of their

views or the likely decision of the Committee.

- 5.5. Planning Committee should not request a site visit at a Committee meeting unless it is felt necessary because: a) the impact of the proposed development is difficult to visualise from the plans and illustrative material available on request; or b) there is a good reason why the comments of the applicant or objectors cannot be expressed adequately in writing or by verbal presentation at the Committee meeting.
- 5.6. Upon receipt of the Committee agenda, Planning Committee members should approach Officers for clarification on any part of a report prior to the Committee meeting.

6. At Planning Committee

- 6.1. Councillors in attendance at Planning Committee must ensure that they are familiar with the guidelines on the procedures of speaking at Planning Committee in the Constitution, particularly the Rules of Procedure in Section 4, paragraph 31.3.
- 6.2. Councillor questions must be asked after speakers' presentations, including to clarify any points made. Members must make a note of any clarification they wish to ask of Officers later.
- 6.3. The Chair and Committee must ensure that discussion is kept strictly to Planning matters during the Committee meetings

7. Decision-making

- 7.1. Decisions on planning applications are a recorded vote, and the minutes will record how each member voted. All members must clearly indicate their vote, and the chair must announce the result at the end of the vote.
- 7.2. If Planning Committee makes an alternative decision to the Officer recommendation, then a motion including the reasons must be raised and seconded.
- 7.3. Members of Planning Committee may foresee planning reasons not to accept an Officer recommendation upon reading a report. On these occasions, members can discuss their concerns with Officers prior to the Planning Committee meeting in order to clarify and refine understanding of the application.
- 7.4. Where Planning Committee chooses not to follow the Officer recommendation, the reasons must be agreed and provided as part of a motion to vote against the Officer recommendation. If Committee members are minded to vote against the Officer recommendation then they must debate the reasons before a motion is raised which includes the reasons.
- 7.5. Where Members make a decision contrary to an Officer's recommendations, the reason(s) for the decision should be made clear, prior to a vote being taken. If a motion is raised to vote against the Officer recommendation (including reasons) then members will need to decide whether they can support the reasons as set out in the motion or,

whether they disagree with those reasons so significantly that they need to vote against the motion or abstain.

- 7.6. Members can agree headline reasons for refusal that are developed by Officers within 3 days of the Committee meeting. The Council is at risk of having costs awarded against it, if, subsequently on appeal, it is unable to justify each ground of refusal.
- 7.7. The correct process in dealing with a deferral when the item returns to Committee is to 're-join' the debate at the point which had been reached before the deferral took place. In order for the debate to be 're-joined' and for a vote to be taken it follows that the membership of the Committee needs to be the same as when the item was originally considered. Members who did not hear the presentations, debate and any other information when the item was originally considered should not take part in the debate as they have not had the same information as the other members of the Committee.

8. Lobbying

- 8.1. Lobbying can lead to the impartiality and integrity of a Councillor sitting on the Committee being called into question, unless care and common sense is exercised by all the parties involved.
- 8.2. All Councillors can raise issues which have been raised by their constituents, with Officers.
- 8.3. If Committee members do express an opinion to objectors or supporters, it is good practice to make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at Committee. Otherwise they will be at risk of being seen to have predetermined their decision, rather than having a predisposition one way or the other.
- 8.4. If any Councillor, whether or not a Committee member, speaks on behalf of a lobby group, they must not take part in the discussion or debate for that item. If they are a Committee member then they will also be excluded from voting and must withdraw from the room once the Committee moves to discussion in order to counter any suggestion that members of the Committee may have been influenced by their continuing presence. They must provide the Chair and the Clerk to the Committee with at least three working days notice of their intention to speak on behalf of a lobby group.
- 8.5. Planning decisions cannot be made on a party political basis in response to lobbying. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- 8.6. Councillors, whether or not a Committee member, should not put pressure on Officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the Officers' impartiality or professional integrity.

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