

## **Part E5: Planning Protocol - Guidance for Councillors and Officers**

### **1. Purpose of this Protocol**

This Protocol sets out guidance for both Officers and Councillors when determining Planning applications, specifically those which come before the Planning and Licensing Committee for determination.

This should be read in conjunction with:

Part C of the Council's Constitution - "Responsibility for Functions", which sets out the role of the Planning and Licensing Committee, and the "Non-Executive Scheme of Officer Delegation".

This Protocol sets out how the Committee will operate and when and how it takes decisions.

### **2. The Planning and Licensing Committee**

#### **2.1 The Development Management role of the Planning and Licensing Committee**

As a quasi-judicial Committee, members of the Committee are required to be non-partisan and to represent the entire District. The practice of political whipping has no place in the decisions of the Committee, because decisions must be made on material Planning considerations.

#### **2.2 Statutory functions of the Committee**

The Committee is responsible for those functions allocated to the Council under the statutory provisions (to include Statutory Instruments, Government Circulars and Planning Policy Statements and Guidance) for control over development as defined in section 55(1) of the Town and Country Planning Act 1990 or any replacement legislation within the administrative District or that will have an impact on the District, save those matters delegated to Officers and included in the Scheme of Delegation.

Members involved in the Planning process shall at all times comply with the requirements of this Protocol, which are in addition to the Code of Conduct for Members. Members can seek advice from the Monitoring Officer or Deputy Monitoring Officer if guidance on the Protocol in conjunction with the Code of Conduct is required.

#### **2.3. Referring an application to Committee**

Members are expected to engage with Planning Officers to resolve issues at every stage and may query interpretations of Policy, and request extra detail.

On applications where one or more valid planning objections have been received, the Officer will consult the Ward Member prior to determining the application, providing a calendar week for response.

If no response is received from the Ward Member within the calendar week, the Senior Officer responsible for Planning can proceed to determine the application.

If Members are going to be absent or unable to respond to such consultations they must ensure that they have an appropriate 'Out of Office' message which includes details of their nominated deputy whom the Case Officer can consult in their absence. Where no such deputy is nominated and it is clear that the Member is away or unable to reply the case will be referred to the Chair or Vice Chair of the Committee who will respond in place of the Member within one calendar week.

Where a Member believes, for reasons related to material Planning considerations, an application should be referred to the Committee, they can request the application be referred to the Committee by emailing the Case Officer. The email must clearly detail the Planning reasons why the matter should be referred to the Committee. When making referrals, Members are reminded that they are expected to attend the Committee meeting to present their reasons for referral.

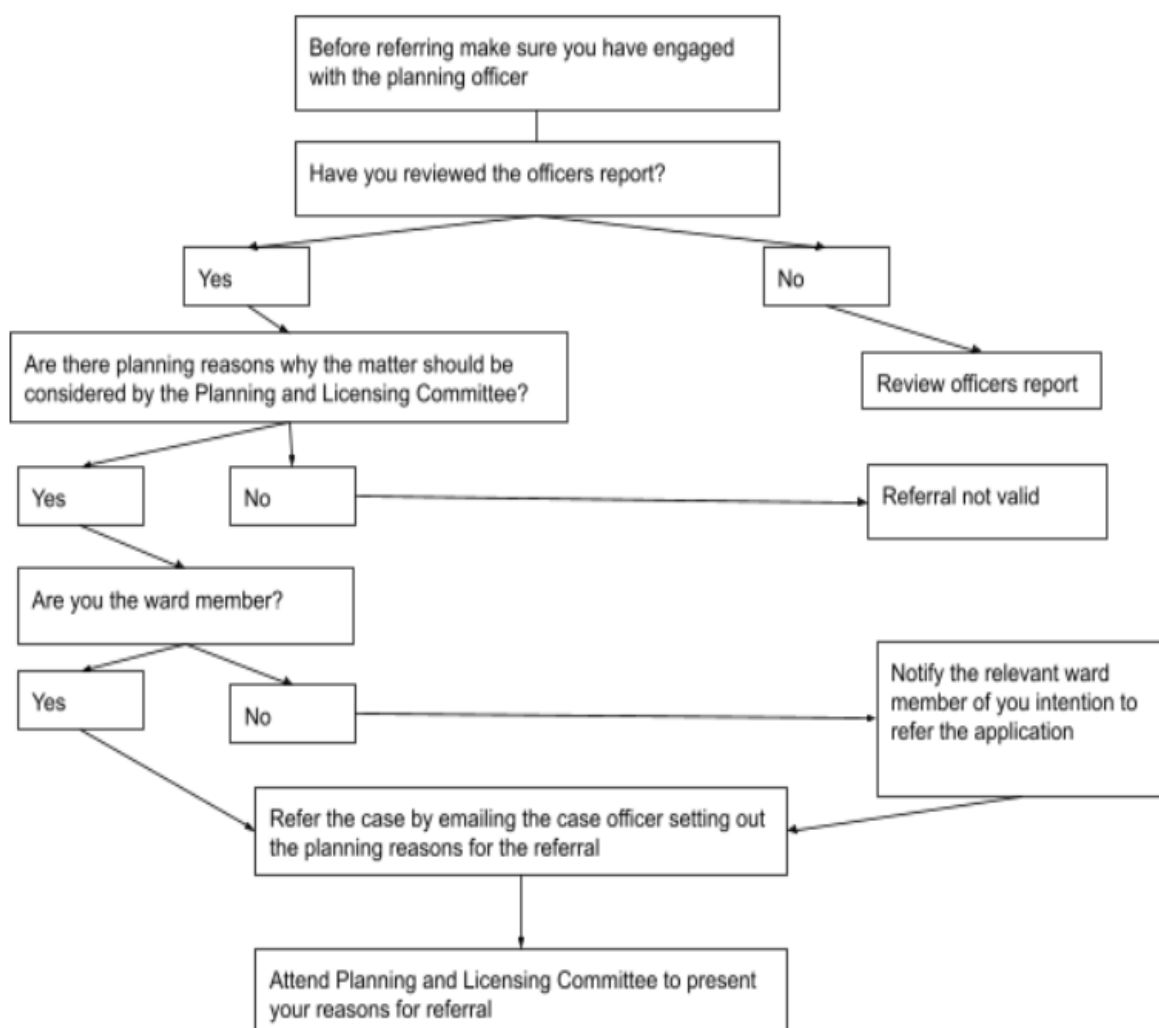
Any Member can refer any application within the District to the Committee. However, where a Member seeks to refer an application for a site located outside of their own Ward, they should notify the relevant Ward Member(s) of their request, and will be required to present their case at Committee.

Applications being considered for referral to the Planning and Licensing Committee will be collated for a meeting three weeks before each forthcoming Committee meeting (known as the Review Panel).

At the meeting of the Review Panel which comprises the Chair and Vice Chair of the Committee, the Lead Officer and the Head of Legal Services, the Chair, Vice Chair and Lead Officer will review the referrals and will consider which applications should proceed to Committee. Referrals which do not contain valid Planning reasons will not be passed to Committee. The final responsibility for the decision will lie with the Senior Officer responsible for Planning.

Following this meeting, the Minutes of the Review Panel will be circulated to all Members and the Committee Agenda will be created for distribution and all relevant parties will be notified.

### Referral process flowchart:



## 2.4. Officers Report

All applications will be presented in the form of an Officer report which will deal with all relevant documents in connection with an application. Any additional information received after the preparation of that report up to 12.00 hrs on the day before the Committee meeting will also be brought to the attention of the Committee if it raises new and relevant material planning matters. This is referred to as Late Material. Papers received after that time, at the discretion of the Chair, will normally be discounted since time will not be available to check their accuracy or to give consideration to their implications.

If any Member receives material from or on behalf of an applicant or third party in connection with an application before a Committee, they should establish from the Planning Officers whether the material has been received by them. If it has not, they should make it available as soon as possible to the Planning Department.

## 2.5. Public Speaking at Planning and Licensing Committee

The purpose of permitting public speaking is to enable those affected by proposed developments to inform the Committee of their viewpoint and to contribute to an open, fair and transparent debate on applications in which they have an interest. All public speaking will be carried out in accordance with any guidance issued by the Council.

Guidance will be provided for members of the public who wish to speak at Committee meetings and practical assistance will be provided for persons undertaking public speaking by Council Officers at the meeting. All public speakers should provide a written copy of their speech to Democratic Services ahead of the meeting.

The Ward Member will be invited to speak for up to five minutes on the application.

The Member who referred an application to the Committee will be expected to attend the Committee meeting also and will be invited to speak on the application.

Public speaking is limited to three minutes per speaker. For each application the applicant/agent and one supporter will be permitted to speak together with one objector and one representative of the Town/Parish Council. Public speaking will take place in the following order:

- Town/Parish Council;
- Objector;
- Supporter;
- Agent/Applicant.

Ward Members who serve on a Town or Parish Council will not present the Town or Parish Council's comments during Public Speaking. If there is no representative available to attend, a written submission of up to 450 words can be provided and will be read out by a Democratic Services Officer.

## **2.6. Questions and Proposals**

Planning debates have two phases - Questions and Proposals. This is required as often expert opinions need to be queried or technical details clarified.

During the Questions section, Committee Members will have the opportunity to ask questions of Officers and attending consultees.

The Chair will decide when the Questions section for an application ends.

During the Proposals phase, Committee Members will have an opportunity to make their points known to the Committee.

Any amendments, alternative Proposals or suggested Conditions will be made during this phase, following the usual rules of debate.

## **2.7. Site Inspection Briefings (SIBs)**

Site inspections are usually called for by the Case Officer for a large development and held prior to the application coming before the Committee. However, in certain

circumstances the Committee can vote on a proposal made by a Committee Member for a SIB. Members need to be aware that this would delay decision-making for another month and such a proposal should not be made lightly.

All site visits must be justified on Planning grounds and the strict criteria for holding site inspections are as follows:

- the character or appearance of the development itself is a fundamental planning consideration;
- a judgement is required on visual impact; or
- the setting and surroundings are fundamental to the determination or to the conditions being considered.

They should not be held when inspection of the site is irrelevant to the material conditions.

SIBs should be used with discretion, must be properly justified and have a significant expected benefit, particularly in light of the cost of SIBs and the increasing availability of visual technology.

SIBs may be either Full Committee, or Panel, with membership of the Panel set on a rota basis. Ward Members will also be invited to attend.

If access to private land is necessary for a site visit, Officers will secure the prior agreement of the landowner, explaining that an SIB is a private meeting of the Council, and that third parties must not be present at the Briefing.

The purpose of the site visit is fact finding. Officers have a duty to point out all relevant features of the site and surroundings. The attending Officer will describe the proposal and draw attention to relevant features. The Officer will not discuss the merits or otherwise of the application ahead of formal publication of the report regarding the application. Members will be able to see the physical features of the site and ask questions, through the Chair, of the Officers to seek clarification.

The visiting party will stay together as a group.

### **Conduct of Visits**

- Visits will be conducted in a formal manner.
- Chair or Vice-Chair will open the meeting, and advise Members of purpose and conduct.
- Officers will highlight issues relevant to site inspection. If issues are raised which necessitate consultation with the applicant or his agent, this should be raised after the close of the meeting and the outcome reported to the subsequent Committee.
- Chair or Vice-Chair to close meeting.

### **General Matters**

- There will be NO debate about the merits of the application and no decision will be made.
- No formal notes will be made. An Officer will orally update the Committee on

any new findings or further developments when it next meets to consider the application, although a record of attendance will be maintained.

- No hospitality will be accepted.

Members who have a Disclosable Pecuniary Interest in an application are precluded from attending any site visit on that matter. In addition, if an Interest becomes apparent during a site visit, the Member should immediately declare it to the Chair and withdraw from the site. Members with Another Interest in an application subject to a site visit must declare the Interest but may continue to attend the site.

## **2.8. Voting at Committee**

It is permissible to vote on an application only if you have been present for the whole of the presentation of, and discussion on, the application.

Note: In the event that there is a lawful requirement for the meeting is being held remotely, the usual rules in relation to quorum will continue to operate. If there is a drop-out of connectivity the Chair will pause proceedings until Members are reconnected. Prior to the vote, Democratic Services will check that Members have heard all of the debate.

## **2.9. Decisions Contrary to Officer Recommendations or to Development Plan Policies**

Should the Planning Committee propose to vote against an Officer Recommendation, it will be for the Members to set out clearly their reasons for doing so and these should be clearly specified in the resolution of the Committee and recorded in the minutes.

## **2.10 Action on Decisions Taken Contrary to Professional Advice**

In cases where an Officer Recommendation for approval has been voted against by Committee and an appeal is lodged:

- Officers shall give full support to external witnesses in preparing evidence for any Public Inquiry, short of giving evidence themselves;
- Officers will give evidence themselves only in exceptional circumstances where their Code of Professional Conduct is not breached (for clarity, not in the case of a Public Inquiry);
- where an Informal Hearing is to be held, with no cross-examination, Officers may give evidence themselves where the Code of Professional Conduct is not breached, but this will normally be only if the Officer concerned has not been involved in formulating the original recommendation;
- Officers must give full support to Member decisions which are appealed using the Written Representations procedures.

## **2.11. Committee unable to determine**

In any case where the Committee has voted both for and against an application, and both votes have been lost, the Committee will be considered as in 'deadlock' and the application will be referred to Full Council for determination.

## **2.12. Non Members of Committee Attending Meetings**

Councillors may attend meetings of the Committee even if they are not a member unless they have a Disclosable Pecuniary Interest. They may speak on applications in their Ward in their capacity as the Ward Member before the debate but they cannot vote. When they attend any meeting of the Planning Committee, they should not sit in the public gallery, but in the place reserved in the Council Chamber for Members of the Council who are not members of the Committee.

### **3. Advice and Guidance for Members**

#### **3.1. Training**

As a member of the Committee, they must undertake introductory and planning procedures training before they can serve on the Committee.

Committee Members will also undertake supplementary training on at least an annual basis.

#### **3.2. The Role of Members**

In making decisions on planning applications, Members will:

- act fairly and openly
- approach each application with an open mind
- carefully weigh up all the material planning considerations
- avoid inappropriate contact with interested parties
- ensure that valid reasons for decisions are clearly stated.

Members will be free to vote on Planning applications as they consider appropriate (i.e. without an explicit or implicit Party 'whip'), deciding them in the light of all the relevant information, evidence and arguments. In accordance with the requirements of the Town and Country Planning Act, they will base their decisions on the provisions of the Development Plan (and all material planning considerations).

They may not give instructions to Officers nor may they place pressure on Officers in order to secure a particular recommendation on an application. They may request extra information about an application from the Case Officer to help them in their deliberations.

They will not use their position improperly to confer or secure for themselves, or for any other person, an advantage or disadvantage.

#### **3.3 Predetermination and Predisposition**

Members must consider each application on its merits and must not do anything which may preclude them from taking part in the determination process. They must only make their decision after reading the report, hearing the Officer's presentation and any points of clarification and all the arguments on both sides.

It is acceptable to have a legitimate predisposition in relation to an application. A Member who has expressed a preference for a particular outcome, will not be taken to have a closed mind when making their decision, provided that a fair-minded observer

would think that they were open to changing their mind in the light of different or additional information, advice or evidence presented.

A Member may, however be considered as predetermining an application if they have acted as an advocate for the application, including being significantly involved in the preparation or submission of the application or an active supporter or objector of the application.

In any circumstance where a Member is unclear they should consult the Monitoring Officer or Deputy Monitoring Officer.

### **3.4. Discussions with Applicants**

Local Planning Authorities are encouraged to enter into pre-application discussions with potential applicants. In addition, negotiations and discussions are likely to be ongoing after an application has been submitted. Such discussions can often be interpreted by the public and especially objectors, as prejudicing the Planning decision making process. In order to allay such perceptions, application discussions should take place within the clear guidelines given below.

Pre-application meetings with prospective applicants are encouraged, but, to avoid misunderstandings, they require a degree of formality. They will normally only involve Officers. Members should not involve themselves in such meetings unless an appropriate Senior Officer is present. It will be made clear at pre-application meetings that:

- Officers' initial views and advice are given on a without prejudice basis which will be consistent with the provisions of the current Development Plan and other adopted Council policy (unless there are clear material considerations that would justify consideration of a development contrary to policy);
- no decisions may be made or advice given which would bind or otherwise compromise the Committee of the Council (or the Senior Officer responsible for Planning if delegated to make the decision); and
- for all pre-application meetings, a note of the discussion (not a formal advice note) will be taken by the Planning Officer, including details of those present, and will be made available for public inspection, subject to the usual rules about access to information. At least one appropriate Planning Officer will be present at all such meetings.

Members may, following discussion with the appropriate Planning Officer, take part in organised post-submission meetings with applicants or other parties. A note of any discussions will be taken and will be made available for public inspection, subject to the usual rules about access to information. At least one Planning Officer will be present at all such meetings, unless the meeting is a formal meeting of a Town or Parish Council (including its Planning Committee).

If Members do engage in pre-application discussions with developers, they must observe the rules on lobbying and observe the do's and don'ts contained in *Positive Engagement – A Guide for Planning Councillors (2008)*

### **3.5. Lobbying**



Lobbying or seeking to influence a decision is a normal and perfectly proper part of the political process. However, it can lead to impartiality being called into question and the need to declare publicly that an approach of this nature has taken place. Problems could arise if Members indicate or give the impression of support or opposition to a development proposal or particular planning application, or declare their voting intention to anyone, before a decision is to be taken. To do so without all of the relevant information (including the Officer report) and views to hand would be unfair and would prejudice the impartiality of the decision-making process, although the Localism Act does allow a Member to express a particular predisposed position.

Lobbying can take place by way of an approach to you, by telephone, or on a chance meeting, or by way of a request to see all or some of the Members of the Committee. It is an essential part of the democratic process that members of the public should be able to make their views known to them. However, to avoid compromising their position before they have received all the relevant information, evidence and arguments, they will:

- avoid discussing with an applicant or any other person their thoughts about the merits and flaws of a planning application or proposed development;
- pass any written material provided to them to the Case Officer dealing with the application for inclusion and evaluation in their report;
- not make it known in advance of the consideration of the application by Committee whether they support or oppose a proposal unless they accept that this will mean that they may not take part in the decision;
- restrict their response to giving procedural advice, and make it clear that that is all they are prepared and allowed to do;
- direct lobbyists or objectors to the Case Officer and advise that their views should be expressed in writing, and
- advise the Senior Officer responsible for Planning as soon as possible of the existence of any substantial lobbying activity.

Members should avoid signing any Petition on a matter likely to be determined by the Committee.

If a Member expresses publicly a final view on an application prior to the meeting at which a decision is to be taken, they will be required to withdraw from the meeting whilst the application is discussed and determined. Public expression of a view would include, for example, making a statement to the press of their firm attitude to an application, or in any document to be made publicly available, at a meeting of the Council or a Town or Parish Council (or one of their Committees), or in any situation where the view expressed might reasonably be expected to gain wider circulation.

### **3.6 Planning and Licensing Committee Members who serve on Parish and Town, or County Councils**

Some Members will also be Members of Parish or Town Councils, or of Gloucestershire County Council (collectively 'Other Council'), as well as Cotswold District Council. This situation can also present problems where the Other Council is consulted on planning applications. It is quite conceivable that a Member in this position could finally vote in a different way when all the relevant information is made available in the Officer's report.

In order to avoid any potential conflict, it would be preferable for such a Member not to contribute to Other Councils' considerations of Development Management matters. Members who do serve on Other Councils may find it helpful to make the following statement to clarify their position when regarding Development Management matters:

*While I will consider this matter as a Member of this Council, I am also on the Planning and Licensing Committee of Cotswold District Council and may be called upon to vote on any application that this Council responds to. In the light of additional information received, I may not vote at the District Council's Planning and Licensing Committee as I will in this meeting.*

See Section 2.5 above for further advice for Members who wish to speak on an application, who are also a Member of an Other Council.

### **3.7 Hospitality**

As a Member of the Council, they are discouraged from receiving hospitality generally, but are expressly prohibited from receiving any gifts or hospitality from people with an interest in a Planning proposal.

## **4. Rules around certain types of application**

### **4.1 Planning Applications from a Member or their relatives**

All applications which are submitted by or on behalf of a Member of the Council in their private capacity or by a close relative or their partner (as defined in the Code of Conduct for Members) or which relate to land which they own and/or have a beneficial interest in, must be drawn to the attention of the Senior Officer responsible for Planning, and will be reported to the Committee for a decision, in accordance with the Scheme of Delegation to Officers.

They must not speak in support of, or take part in the determination of, an application as described above. They must declare an Interest and leave the meeting and not seek to influence any decision made. They may, however, appoint an agent who can speak, subject to the rules of Public Speaking at Meetings of the Committee.

If an application is submitted by a close relative or partner (as defined in the Code of Conduct for Members) of a Member of the District Council, the Member should not speak in support of, or take part in the determination of, the application. The applicant may speak at Committee meetings subject to the rules of Public Speaking at meetings of the Committee or appoint an agent to speak on their behalf.

### **4.2 Planning Applications submitted by the Council itself**

All applications which are submitted by the Council itself must be reported to the Committee for a decision, in accordance with the Scheme of Delegation to Officers. However, once the principle of development has been established, subsequent applications to discharge conditions or for minor variations may be determined in accordance with the Scheme of Delegation.

### **4.3 Applications submitted by Officers**

An application submitted by or on behalf of an employee of the Council or Publica, will be reported for determination by the Committee. Exceptions may be made for non-planning staff (excluding those in politically restricted posts) in accordance with the Scheme of Delegation.