

## Part 5D- Planning Protocol

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## 1. Introduction

- 1.1 This Protocol sets out guidance for both officers and members when determining planning applications, specifically those which come before the Planning Committee for determination.
- 1.2 It sets out the role of the Planning Committee and its members, how the Committee will operate and when and how it takes decisions. It should be read in conjunction with the Code of Conduct for members.
- 1.3 Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is often highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions). This is reinforced by the legal status of development plans and decision notices. It is essential, therefore, that the planning process is characterised by open and transparent decision-making.
- 1.4 **The aim of this Protocol:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way and provide the public with a transparent explanation of the planning process and the roles and responsibilities within that process.

## 2. The Planning Committee

### 2.1 The development management role of the Committee

- 2.1.1 The development management role of the Planning Committee is to manage development and other operations in the Borough, so as to provide a satisfactory physical, social and economic environment for the benefit of the whole community by exercising the Council's powers under the Town and Country Planning Acts, and various legislative provisions concerned with the protection of the environment, in accordance with the approved development plan, the policy framework, the Local Plan and the Council's relevant adopted strategies including the strategies for Climate Emergency and Green Economic growth, subject to any agreed scheme of delegation to officers. As a quasi judicial Committee members of the Committee are required to be non-partisan and to represent the entire borough. The practice of political whipping has no place in the decisions of the Planning Committee, because decisions must be made on material planning considerations. The Committee may authorise the enforcement of planning control and, in conjunction with the Senior Officer responsible for Planning, has the responsibility for enforcing compliance, and the Committee may authorise any remedial action including prosecution that is permissible by law to achieve compliance.



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

2.2.1 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 Borough or that will have an impact on the Borough 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.

## **2.3 The role of members of the Planning Committee**

2.3.1 In making decisions on planning applications, you will:

- act fairly and openly;
- act impartially, approaching each application with an open mind;
- make decisions with sound judgement and carefully weigh up all the material planning considerations;
- not favour any person, company, group or locality, nor put yourself in a position where you appear to be doing so;
- ensure that valid reasons for decisions are clearly stated
- Understand, and be able to interpret, all the plans and policies that are relevant to making your decision. This includes national and local plans, policies and guidance.
- Have regard to wider Council strategic plans and objectives, and financial aspects e.g. economic growth strategies, any proven need for house building and numbers;
- Listen to people on both sides and being fair to all;
- Be aware of the duty to objectors and the duty to applicants as well

## **2.4 The role of officers**

2.4.1 The role of officers is to handle all applications in a professional and balanced way. They will visit the site and consider all representations made about an application. Officers involved in the processing of applications must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct.

2.4.2 As a result, planning officer's views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

2.4.3 Every application is dealt with by a case officer who will handle the application from validation through to determination and beyond. Members will be advised who the



case officer is through the weekly list of planning applications; this is emailed to all members.

- 2.4.4 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 the day of 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.
- 2.4.5 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.

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

#### **3.1 Calling applications to Committee**

- 3.1.1 Where a Member believes, for reasons related to material planning considerations, an application should be referred to the Committee, they can, within 21 days of being notified of a valid application by way of the weekly application list, request the application be referred to the Committee by emailing the Case Officer. The email must clearly detail the reasons why the matter should be referred to the Committee. (N.B. Members, after discussing it with the Case Officer or Head of Planning, may also refer applications where there is a significant public interest in doing so)
- 3.1.2 When making referrals, Members are reminded that they are expected to attend the Committee meeting to present their reasons for referral. Members are expected to engage with Planning Officers to resolve issues at every stage and may query interpretations of Policy, and request extra detail.
- 3.1.3 Any Member can refer any application within the Borough 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 Members of their request.
- 3.1.4 Requests for referral to the Planning Committee will be considered by the Chair or in their absence Vice Chair of the Committee, the Case Officer and the Head of Planning who will determine whether or not the application should proceed to Committee.
- 3.1.5 Except in circumstances where the Chair or in their absence the Vice Chair believes there to be exceptional circumstances, requests which are received outside of the 21 days or which do not contain valid Planning reasons may not be passed to



Committee. The final responsibility for the decision will lie with the Head of Planning.

3.1.6 A schedule of all requests, together with the reasons as to whether they were accepted or declined will be maintained by the Head of Planning.

### 3.2 Code of Conduct

3.2.1 Members should apply the rules in the Code of Members' Conduct first, which must always be complied with.

3.2.2 **Members should also** then apply the rules in this Planning Protocol, which supplements the Code of Members' Conduct for the purposes of planning control. Members who do not act in accordance with the Code of Conduct and this Protocol, may put:

- the Council at risk of proceedings on the legality or maladministration of the related decision which may lead to that decision being quashed; and
- yourself at risk of either being named in a report made to the Standards Committee, Council or the Local Government Ombudsman or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer.

3.2.3 **If any member has a concern** in relation to potential breaches of the Code of Members' Conduct or this Planning Protocol they should raise it with the Monitoring Officer. Officers and Members at all levels of an organisation need to be prepared to speak up and challenge inappropriate behaviour where the authority's integrity is at risk.

### 3.3 Interests under the Code of Members' Conduct

3.3.1 Members must comply with the rules regarding the registration and disclosure of Interests as set out in the Members Code of Conduct. Members attention is specifically drawn to the following:

- **Do not** use your position improperly for personal gain or to advantage your friends or close associates.
- Keep your register of interests up-to-date
- Disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

3.3.2 Where you have a Disclosable Pecuniary Interest (as defined within the Member's Code of Conduct):

- Disclose the Disclosable Pecuniary Interest to the Committee, unless the Monitoring Officer considers it to be sensitive in nature
- Leave the meeting
- **Do not** vote on the matter, participate (or further participate) in the discussion of the matter unless a dispensation has been granted

3.3.3 Where you have an Other Interest you may attend the meeting for the purposes of making a representation however, you must:

- Disclose the Other Interest to the Committee
- Leave the meeting (once you have made your representation) and **do not** vote on the matter, participate (or further participate) in the discussion of the matter, if the matter affects:
  - your well-being or financial position;
  - the interest you hold that constitutes an Other Interest;
  - the well-being or financial position of a member of your family or a person with whom you have a close association;
  - a person with whom you, a close member of your family or a close associate have a contractual relationship; or
  - the determination of an application submitted by you, a close member of your family or a close associate; and a reasonable member of the public knowing the facts would reasonably regard the interest as so significant that it is likely to prejudice your judgement of the public interest

unless a dispensation has been granted.

3.3.4 You may apply to the Monitoring Officer for a dispensation. If granted, this will allow you to participate in a discussion and vote on a matter notwithstanding a Disclosable Pecuniary Interest or Other Interest as set out above.

3.3.5 Where a member is making an application for planning permission to the authority they should advise the notify the Monitoring Officer in writing no later than submission of the application.

3.3.6 Planning Applications made by members will always be reported to the Committee as a main item and not dealt with by officers under delegated powers.

### 3.4 Relationship with Officers

3.4.1 Members must not put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning or the relevant case officer, which may be incorporated into any committee report).





3.4.2 Members should recognise that officers are employed by the Council, not by individual Councillors. A successful relationship between Councillors and officers can only be based upon mutual trust, respect, courtesy and understanding of each others positions. This relationship, and the trust which underpins it, should never be abused or compromised.

3.4.3 Members must recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

### **3.5 Engagement – contact with applicants, developers, supporters and objectors**

3.5.1 Local 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.

3.5.2 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 Planning 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.

3.5.3 You 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).

3.5.4 If you do engage in pre-application discussions with developers, observe the rules on lobbying and observe the do's and don'ts contained in Positive Engagement – A Guide for Planning Councillors (2008). In addition to the above members should also follow the following general advice:

- **Do** follow the rules on lobbying contained in this Protocol
- report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- raise any issues upon which you think clarification is needed with the Head of Planning and / or the case officer for the application.
- forward any information received which the case officer may not already have so that all information is duly considered.

### 3.6 Lobbying

3.6.1 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.

3.6.2 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 Planning Committee. It is an essential part of the democratic process that members of the public should be able to make their views known to you. However, to avoid compromising your position before you have received all the relevant information, evidence and arguments, you will:

- avoid discussing with an applicant or any other person your thoughts about the merits and flaws of a planning application or proposed development;
- pass any written material provided to you 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 you support or oppose a proposal unless you accept that this will mean that you may not take part in the decision;



- restrict your response to giving procedural advice, and make it clear that that is all you 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 Planning Committee. If you express publicly a final view on an application prior to the meeting at which a decision is to be taken, you 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 your firm attitude to an application, or in any document to be made publicly available, at a meeting of the Council or a Parish Council (or one of their Committees), or in any situation where the view expressed might reasonably be expected to gain wider circulation.

### **3.7 Predetermination and Predisposition**

- 3.7.1 Members must consider each application on its merits and must not do anything which may preclude them from taking part in the determination process. You must only make your decision after reading the report, hearing the Officer's presentation and any points of clarification and all the arguments on both sides. If a member predetermines an application they will be precluded from taking part in the debate and vote.
- 3.7.2 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 you were open to changing your mind in the light of different or additional information, advice or evidence presented.
- 3.7.3 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.

### **3.8 Planning Committee Members who serve on Parish or County Councils**

- 3.8.1 Some Councillors will be Members of Parish Councils, or of Gloucestershire County Council (collectively 'Other Council'), as well as Cheltenham Borough Council Councillors. This situation can also present problems where the Other Council is consulted on planning applications. It is quite conceivable that a Councillor in this position could end up voting in a different way when all the relevant information is made available in the Officer's report.



- 3.8.2 In order to avoid any potential conflict, it would be preferable for Councillors not to contribute to Other Council's considerations of development control matters. Members who do serve on Other Councils may find it helpful to make the following statement to clarify their position when regarding development control matters:

*While I will consider this matter as a Member of this Council, I am also on the Planning Committee of Cheltenham Borough 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 Borough Council's Planning Committee as I will in this meeting.*

### **3.9 Hospitality**

- 3.9.1 As a Member of the Council you 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 Site visits**

- 4.1 As part of the Councils process of fulfilling its duties of Planning Committee all Planning Committee members and substitutes are encouraged to take part in a monthly 'planning view'. This is a structured site visit organised by officers, and is an invaluable tool in the decision making process. Planning view provides members with an opportunity to view and enter application sites (and neighbouring sites where necessary) and also consider the surrounding context in advance of the Planning Committee meeting. In particular planning view offers the opportunity to:

- consider the impact of the proposed development if difficult to visualise from the plans and any supporting material, including photographs taken by officers
- more appropriately consider the comments of the applicant and objectors when these cannot be expressed adequately in writing

- 4.2 Planning view should only incorporate sites which members are justified in visiting on planning grounds, including:

- 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

- 4.3 Conduct of Visits

- Visits will be conducted in a formal manner

- The Chair or Vice-Chair will open the meeting, and advise members on the purpose and conduct;
- Officers will highlight issues relevant to the site inspection;
- When on site, members can ask questions or seek clarification on matters relevant to the site but it is not an opportunity to express opinions or views on the development proposed.
- No formal notes will be made of the visit, however a record of attendance and key planning Q&As will be captured and shared with the committee;
- No hospitality will be accepted

4.4 Members who have an 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.

4.5 It is important to ensure that planning view does not become an impromptu lobbying opportunity for the applicant or objectors. If members are approached on site by the applicant or third parties, you should advise that they may make representations in writing to the authority and then direct them to officers present. Members should not discuss applications with the applicant or third parties and should be aware of the provisions of the 'Lobbying of Councillors' section found elsewhere within this Code of Conduct.

4.6 Members should not enter a site which is subject to an application other than on planning view as this may give the impression of bias. If you do consider it essential to enter the site, or a neighbouring site, other than through planning view, please advise the Head of Planning of your intention to do so and the reasons why. If you do intend to conduct such a visit, again it is important to be aware of the provisions of the 'Lobbying of Councillors' section found elsewhere within this Code of Conduct.

4.7 Any such visit made outside of planning view will be recorded and should be declared by the member at the relevant Planning Committee

## **5 Public speaking at meetings**

5.1 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.

5.2 Guidance will be provided for members of the public who wish to speak at planning 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. Members of the public are

permitted to share slides, photographs etc provided that a copy is provided to Democratic Services upon registering to speak.

5.3 Public speaking is limited to five minutes per speaker. For each application the applicant/agent or one supporter will be permitted to speak together with one objector and one representative of the parish council.

5.4 Public speaking will take place in the following order:

1<sup>st</sup> – Objector

2<sup>nd</sup> – Applicant, Agent or Supporter

3<sup>rd</sup> – Parish Council

5.5 Upon conclusion of public speaking the Ward Member will be invited to speak for up to 5 minutes.

## **6 Decision making and the voting process**

6.1 Members should only vote on an application if they have been present for the whole of the presentation of, and discussion on, the application.

### **6.2 Deferral of applications**

6.2.1 Any member who wishes to move a motion seeking to defer an application before Committee must ensure that the reasons for their motion and any subsequent decision are recorded in the minutes of the meeting.

6.2.2 Decisions contrary to officer recommendations or to development plan policies:

Before making a decision which differs from the officer recommendation or the development plan, the Committee should take the following steps:

- Where possible, discuss the areas of difference and the reasons for that difference with officers beforehand;
- Record the detailed reasons as part of the mover's motion; and
- Where there is concern about the validity of those reasons, consider deferring to another meeting to have the putative reasons tested and discussed.

6.2.3 Before Members vote on a motion to determine an application contrary to officer recommendation, an officer should be given an opportunity to explain the implications of the contrary decision including an assessment of a likely appeal outcome and the chances of a successful award of costs against the authority should one be made.

6.2.4 If the Committee makes a decision contrary to officer recommendation or the development plan (whether for approval or refusal or changes to conditions or

planning obligations) a detailed minute of the Committee's reasons should be made. Members should be prepared to explain in full their planning reasons for the decision they are making. Pressure should never be put on officers to 'sort out the planning reasons' following the meeting.

## **7 Non Committee Members attendance at Committee Meetings**

- 7.1 All members may attend meetings of the Council's Planning Committee even if they are not a member unless they have a Disclosable Pecuniary Interest. You may speak on applications in your ward in your capacity as the Ward Member before and/or after the debate but you cannot vote. When you attend any Planning Committee, you 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.

## **8 Training**

- 8.1 A forward plan of a minimum of 3 training events for members will be organised annually. Planning Committee Members and anyone who may sit as a substitute will be required to attend a minimum of 2 training sessions each municipal year. Members who fail to attend the minimum training will be excluded from meetings of Planning Committee until appropriate training has been completed. This training will include a balance of the following:
- Organised visits to review permissions granted, providing an opportunity for both Members and Officers to reflect on the details of the completed schemes and consider lessons learned;
  - Topics of interest and or to consider issues in depth or where overturns have indicated problems with planning policy;
  - Formal training by external speakers;
- 8.2 New Planning Committee and substitute members must have attended initial induction training before they sit on the Planning Committee

## **9 Rules around certain types of application**

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

- 9.1.1 All applications which are submitted by or on behalf of you as a Member of the Council in your private capacity or by a relative or your partner (as defined in the Code of Conduct for Members) or which relate to land which you own and/or have a beneficial interest in must be drawn to the attention of the Monitoring Officer, and will be reported to the Planning Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to Officers.

- 9.1.2 You must not speak in support of, or take part in the determination of, an application as described above.
- 9.1.3 You must declare an Interest and leave the meeting and not seek to influence any decision made. You may, however, appoint an agent who can speak, subject to the rules of Public Speaking at meetings of the Planning Committee.
- 9.1.4 If an application is submitted by a relative or partner (as defined in the Code of Conduct for Members) of a Member of the Borough Council, the Member should not speak in support of, or take part in the determination of, the application.
- 9.1.5 The applicant may speak at Committee meetings subject to the rules of Public Speaking at Meetings of Planning Committee or appoint an agent to speak on their behalf.

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

- 9.2.1 All applications which are submitted by the Council itself must be reported to the Planning Committee for a decision rather than being dealt with 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.

## **9.3 Applications submitted by Officers**

- 9.3.1 An application submitted by or on behalf of an employee of the Council who is either an employee of the Planning Department or holds a politically restricted post will be reported for determination by the Committee.



