

## **APPENDIX 2**

### **Protocol for Planning Committee meetings**

#### **1. Referral procedure for planning applications by Ward Councillors**

- 1.1 This procedure relates to planning applications only and not any other planning matters which are delegated to the Deputy Chief Executive (Place).
- 1.2 All Members will receive a dated weekly list of planning applications registered. The list will categorise applications by Ward, and an initial assessment of the level at which the decision will be taken – Officer or Planning Committee.
- 1.3 Applications and development proposals vary in their complexity, and some are particularly contentious and generate considerable local interest. A Ward Member can request that a planning application be considered by the Planning Committee. In order to satisfy the requirements for a fair and transparent Development Management service and to ensure that performance targets are not compromised, any request by a Member for an application to be referred to Committee should be made in accordance with the following procedure:
- 1.4 A Member for the Ward within which the application site is located, or an adjoining ward upon which the application has a significant impact (meaning valid planning reasons or significant local interest), may request that such an application be determined by the Planning Committee. Any requirement so made shall be called “a referral”. In order to make a referral, a Member must make a written submission (which shall be by email) to the Assistant Director for Planning, Transport & Housing Delivery within 21 days of the date shown on the relevant weekly list.
- 1.5 Referral requests must state the reasons why there is need for a committee decision, making reference to valid planning reasons and the significant concerns or potential significant impact of the development. Valid planning reasons must be given; stating which of the requirements (a-d) set out below are being met.
  - a) issues relating to highways, including access/visibility problems,
  - b) the design, scale, character and/or relationship of existing buildings and proposed buildings,
  - c) the effect of the proposal upon the character or amenity of adjoining land and buildings and/or the impact on the surrounding area, and/or
  - d) there are significant policy or precedent implications.

- 1.6 The Assistant Director for Planning, Transport & Housing Delivery will, in consultation with the Chair or Vice Chair of the Planning Committee confirm or reject the 'referral' based on the significance of the development and validity of the planning reasons.
- 1.7 In accordance with good practice, Members requesting a call-in should attend the Committee meeting. However, if not available, a nominated substitute Ward Member is permitted to attend and should notify the Constitutional Services Officer accordingly as soon as possible after the Committee agenda is published, and prior to the meeting.
- 1.8 Where a member of the Planning Committee has referred an application to Planning Committee, they should step-down from Committee for the meeting in which that application is considered, with a substitute nominated to take their place on Committee. The member is then able to speak as a ward councillor on the application.

## **2. Procedure for considering planning applications at Planning Committee**

- 2.1 The Committee Agenda will include a report on each application which sets out all material considerations and the Officer's recommendation. Members of the Committee are, therefore, already aware of the relevant issues for any application at a Committee meeting.
- 2.2 The Planning Officer will introduce the report and a Supplementary Late Information List will report any matters that have arisen since the publication of the report, for example, the receipt of further letters or proposed new / amended conditions.
- 2.3 The Chair will invite the objector or a representative of the objectors (if any) to speak. Members may ask questions of the objector or representative of the objectors to clarify any points that have been made.
- 2.4 The Chair will invite the applicant or a representative of the applicant to speak in support of the application and on issues raised by objectors. Members may ask the applicant or a representative of the applicant to clarify the proposals or their response to the objections.
- 2.5 Ward Councillors not on the Committee may speak on applications affecting their Ward at a meeting of the Planning Committee. Members may ask questions of the Ward Councillors to clarify any comments they have made.
- 2.6 The Planning or other Officers (as appropriate) will be invited to comment on issues raised by the speakers.

- 2.7 The Committee will then debate the issues and may ask questions of the Planning and other Officers and make a decision on the application (see below).
- 2.8 On occasions, an application may be deferred by Committee without debate of the issues, for example because further information is awaited. In such cases, speakers will not be permitted to address the Committee until the application is debated at a future meeting. Speakers will be notified of the date of the meeting which will determine the application. If the Committee defers an application after hearing from a speaker or speakers, for example to carry out a site visit, no speaker, apart from Ward Members, will be allowed to address the Committee at a subsequent meeting considering the application unless the application has been materially altered. Speakers will be notified in writing of the determination of the application.
- 2.9 Members of the public are not allowed to take part in the debate and may not question Members, Officers or applicants whilst the Committee is determining the application. No documents, photos or other material may be circulated by the applicant, objector or Ward Member (as appropriate) at the Committee meeting.
- 2.10 Anyone registered to speak on an application arriving after the application has been dealt with will not be allowed to speak on that application.

### **3. Decisions by Planning Committee**

- 3.1 Having regard to the fact that decisions on planning applications are made in the public arena, Members of Planning Committee should conduct their business in a fair and sensitive manner. The debate on a planning application should be confined to the planning merits, or otherwise, of a development proposal.
- 3.2 The following principles should be observed when planning applications are determined.
- i) a party whip should not be applied on a planning application ;
  - ii) it is for Members as individuals to balance the proper planning considerations in order to reach their own judgement on a planning proposal on the basis of information before them;
  - iii) it is wrong for a Member to vote on a planning application without coming to a properly balanced judgement on the basis of proper planning considerations.
- 3.3 The Council has a duty to process applications without undue delay. Applications should not be deferred as a delaying tactic or to put off making a decision because of the number of objectors at a meeting or because of uncertainty in the face of opposing parties being present at the meeting.

3.4 Decisions taken by Committee should be open and transparent in the sense that any fact or document which Committee takes into account in coming to a decision should be a matter of public record.

#### **4. Consultation with Chair, Vice-Chair and Opposition Spokesperson of Planning Committee**

4.1 There will be occasions when the Planning Committee has considered an application but is not able to issue a final decision because all statutory obligations have not been fulfilled. It is anticipated that referrals of this kind will be used infrequently.

4.2 In these cases, and at the Committee's discretion, the decision may be delegated to the Assistant Director for Planning, Transport & Housing Delivery in consultation with the Planning Committee Chair, Vice-Chair and main opposition spokesperson.

#### **5. Planning Committee decision contrary to officer recommendation**

5.1 In determining planning applications, Planning Committee is entitled to decide the weight to be attached to the various planning considerations relevant to the application. This could lead to a decision being taken contrary to the recommendation of the officers. In these circumstances, it is essential that the reasons for the decision are clear in the minds of the Committee members, and that they are valid and reasonable planning reasons.

5.2 Where the Committee is considering a motion to make a decision contrary to officer's recommendation (whether for approval or refusal), the reasons for the recommendation shall be made clear at the meeting prior to the Committee voting on the motion and a detailed minute will be made. The officer shall also be given the opportunity to explain any implications of the contrary decision before the vote is taken.

5.3 As part of any motion for refusal of a planning application against officer recommendation, a member of the Committee must be put forward to represent the Council at any subsequent appeal of the decision should the motion be carried and planning permission refused.

#### **6. Public Question Time and Public Participation at Planning Committee**

- 6.1 This paragraph explains how the public may ask questions of the Planning Committee and how applicants for planning permission and other persons who may be affected by a proposed development may speak to the Committee.
- 6.2 The agenda for each meeting is open for public inspection at the Civic Centre Entrance (Rochdale Road) and at Access Oldham (Cheapside Entrance) (when accessible) and on the Council's website from five working days preceding the meeting.

### **Public question time**

- a) The Committee will consider questions relating to general planning issues and procedures but NOT about individual planning applications or enforcement matters.
- b) Questions must be submitted in writing to Constitutional Services no later than 12.00 noon, two days preceding the meeting (excluding Saturdays, Sundays and Bank Holidays).
- c) The Chair, or some other person at the request of the Chair, shall read out the question.
- d) A Member of the Committee may speak to any question, then the Chair of the Committee will give a verbal response to the question(s) at the meeting. The Chair's response will be confirmed in writing within five working days of the meeting.
- e) Questions regarding individual matters should be addressed to the Council's Planning Officers in the first instance.

### **Consideration of planning applications by the Planning Committee – public participation**

- 6.3 The definitive lists of applications for consideration by the Committee will be completed five working days before the meeting. Please contact Constitutional Services to find out if your applications is on the list of applications to be considered. If it is listed, please advise the Constitutional Services Officer if you wish to speak stating whether you support or object to the proposal. Requests to speak must be received no later than 12:00 noon on the day of the meeting.
- 6.4 Procedure Notes to all Speakers:

- a) The number of speakers will be limited to two, namely an objector or a representative of the objectors, and the applicant or a representative of the applicant. A Ward Councillor may also speak on an application in their ward.

- b) It is important to inform Constitutional Services as soon as possible if you wish to speak to the Committee since only the first person to do so will normally be invited to speak.
- c) Speakers will be allowed to speak for up to 3 minutes to state their case. This time period will be strictly enforced. Speakers should make comments only, and not ask questions of officers or Committee Members.
- d) Where there are a number of objectors, a representative should be nominated to speak, failing which the first person to have informed Constitutional Services of a wish to speak, will be invited to speak to the Committee.
- e) The public speaking procedure does not allow electronic video presentations or distribution of letters/statements/photographs, etc. to Members of the Planning Committee immediately before or during the meeting.
- f) Ward Members will be allowed to speak for up to 5 minutes and should make comments only and not ask questions of officers or Committee Members.

## **7. Training for Planning Committee Members**

7.1 All Members of the Planning Committee shall undertake training on the following matters before serving on the Committee:

- An Overview of the English Planning system
- The Determination of Planning Applications
- The role of Planning Committee and its members in determining planning applications
- Matters of Predisposition and Predetermination
- Planning Committee procedures

7.2 Other voluntary training sessions may from time to time be arranged by Officers to ensure Members are fully briefed and trained on any changes to legislation or procedures, or on particular planning-related matters that officers consider would be beneficial for Committee members.

## **8. Lobbying, Predetermination and Bias**

8.1 It is important that Members deciding planning applications should not put themselves in a position where they could be seen to have made their minds up on a particular planning issue before the Committee (predetermination). Lobbying is a normal and perfectly proper part of the political process, but how members of the Planning Committee respond to such lobbying in relation to a development proposal that is, or is likely to be, subject to a planning application must be considered carefully to avoid predetermination.

8.2 Section 25 of the Localism Act 2011 states that prior indications of a view of a matter does not amount to predetermination in the following situations: “(2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because- (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter and (b) the matter was relevant to the decision.” This is the present position in law, so whilst Members are entitled to express a view in relation to an application, they should indicate they still have an open mind in relation to an application until they have had the opportunity to consider a Planning Committee report and heard all of the views on an application at Planning Committee, and that the final decision in relation to the application can only be made by Planning Committee.

8.3 Lobbying of Members for their support in relation to development applications is likely to come from applicants or their agents, or other interested third parties (e.g. landowners) looking for support for a proposed development and / or local residents or other third parties objecting to a proposed development

8.4 To avoid the appearance of bias and predetermination the following is recommended for Planning Committee members:

- a) Members should avoid expressing an opinion which may be taken as indicating that they have already made up their minds on an issue before they have the benefit of all the evidence and arguments. This may include comments made during debates in any other Council meetings or committees where future projects are being discussed.
- b) Members should never indicate the likely decision on an application by Committee or otherwise committing the Council .
- c) Members should restrict themselves to giving procedural advice, including the Council's public consultation arrangements and how representations can be made.
- d) Members should refer any approaches to Planning Officers and/or where considered appropriate, and possible, direct the lobbyist to another Member of Council not on Planning Committee.
- e) Where a Member receives written representations, documents or other information directly in relation to a planning application under consideration, or a prospective application, a copy of the correspondence, documents or information should be passed to the Planning Service in order that they can be included in the Committee Report. When this is not possible due to timescales, the Member should present the representations, documents and information at the Committee meeting.

- f) Members should make it clear that they will only be in a position to make a final decision after having heard all the relevant evidence and arguments at the Committee meeting. The Committee report may well contain issues previously unknown to the Councillors. Also, further aspects affecting the decision can arise during the discussion or through public speaking rights at the meeting, which were not previously evident.
- g) Members of the Planning Committee or other decision-making Committee should not organise support for, or opposition to, a planning application, adoption of a policy or any other planning related issue, or seek to lobby other Members or act as advocate.

8.5 Members should report instances of significant or persistent or inappropriate lobbying, particularly from an applicant or their agent, to the Monitoring Officer.

8.6 No Member of Council should state, or give the impression, that he/she is able to secure a particular outcome on a planning application.

8.7 A Member sitting on the Planning Committee who represents a ward affected by a planning proposal may be in a difficult position, particularly if it is a controversial application. If a Ward Member responds to lobbying by going public in support of a particular outcome it will be difficult for that Member to argue convincingly when Committee makes a decision that he/she has carefully weighed up all the evidence and arguments presented.

8.8 Whilst not amounting to an interest, that Member would have prejudiced their position in the decision-making process on that application.

8.9 Any Member of the Planning Committee who responds to lobbying by going public in support of a particular outcome on a planning application prior to a Committee meeting should make an open declaration at the meeting at which the application is considered and not vote on the issue. The Member may seek to address the meeting on the same basis as a non-committee member.

8.10 This could be seen as a restriction on the Councillor's wish, and duty, to represent the views of the electorate. The situation therefore underlines the advice earlier in this section, that Members should await the presentation of all the evidence at a Committee meeting before making a final decision.

## **9. Discussions/meetings between applicants, the Council and local communities**

9.1 Discussions and meetings between potential applicants or their agents and the Council prior to the submission of an application, are encouraged and can be of



considerable benefit to both parties. Typically, this is done through the pre-application advice service which the Council's Planning Service offers. Unless the applicant waives their right to confidentiality, these pre-application discussions with officers are held in confidence. This is because part of the purpose of such a service is to enable a prospective purchaser or developer to air ideas and possible proposals in a "safe space", before they settle on a preferred development option to include in a planning application. Keeping such discussions in confidence can be helpful, for example, where a developer has an option on acquiring land, or is in competition to acquire it and disclosure of proposals could prejudice a negotiating position. The role of the Planning Service in these discussions is, without prejudice to any decision of the Council, to explain and interpret the relevant policies which will apply to a proposal.

- 9.2 Through the pre-application advice process, officers may give an indication of the recommendation which is likely to be made on any subsequent application if the proposals are taken forward, particularly in the light of the provisions of the adopted Development Plan. It will always be made clear to the applicant that this does not bind the Council to making a particular decision, whether the decision on any subsequent planning application is to be made by Planning Committee or will be a delegated officer decision.
- 9.3 In many cases, and particularly major or complex proposals, developers will seek to share their proposals with the public and the Council before making a planning application. This allows developers to inform the public at the earliest opportunity and undertake meaningful community engagement and to inform and shape development to meet community aspirations and address policy requirements.
- 9.4 Early discussions with officers and, in appropriate circumstances, with relevant Members about significant future development proposals are therefore encouraged, provided that they do not become, or are seen to be part of the lobbying process. Guidance on these issues has been published by central government and the Local Government Association.
- 9.5 In order to avoid such problems, any meetings and discussions with potential applicants, or their agents, should take place within the guidelines set out below:
  - a) It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any opinions expressed are provisions and are not those of the Council. Officers and Members should clearly explain at the outset their role.
  - b) By the very nature of such discussions, not all relevant information will be to hand, and in the case of pre-application discussions, no formal consultations with interested parties will have taken place.

- c) Any advice made by officers should be impartial and based upon the Development Plan and material planning considerations.
- d) A written note should be made of any discussion/meeting and placed on the appropriate file. Where a developer prepares a note of the meeting, this should be checked for accuracy and retained on file, and the developer informed in writing of any material inaccuracies.
- e) A follow up note or letter should be sent following any potentially contentious meeting or a meeting involving a number of issues or where documentary material has been left with the Council.
- f) Care should be taken to ensure that advice is impartial, and seen to be, otherwise a subsequent report could appear to be promoting a particular view. No indication should be given at the pre application stage as to what recommendation will be made when the application is submitted.
- g) Under no circumstances should Members arrange to meet applicants/agents or third parties for the purposes of a site inspection.

9.6 Where councillors are involved in meetings with developers the following additional requirements will apply:

- h) Community engagement about a specific development proposal is often best undertaken by the prospective developer at the pre-application stage. This will generally be considered when a developer is certain of making an application and wishes to inform the community and canvass opinion about the proposals, so these may be taken into account in the submitted scheme. It is not normally the role of the Council or any councillor to organise this engagement. However, if a councillor did decide to organise such a pre application meeting, the developer should be invited as well as the public and the purpose should be clear that it is to obtain information and views from both sides. In certain cases, it would also be advisable to invite relevant consultees.
- i) Members who wish to engage in such preliminary discussions should notify the Planning Service in writing so that their involvement can be recorded on the relevant planning file.
- j) It is however important as community representatives, that Members should be able to participate and meaningfully contribute at this stage of the process, when developments are being formulated. Care will however need to be taken so that a participating councillor is not seen to have prejudged the proposal if they are intending to sit on the Planning Committee when the resulting application is submitted for determination. Any consultation process should be transparent and maintain the probity of the process. The role of a councillor who wishes to take part in any future Committee debate on the application is

different from that of a community leader, in that it must be more passive and independent, due to the constraints of the planning process, and the need to maintain probity. This role is one of facilitation, of bringing the two sides together to exchange information and views. The councillor could even articulate the views of the community, without being prejudiced, providing it was made clear they did not necessarily hold those views and would only make a judgement as and when the application presented to Committee for consideration, along with all the accompanying Officer advice and information. If, however, the councillor takes a more active role in promoting or opposing a development, an interest must be declared.

- k) When councillors take an active role in preliminary discussions/community engagement exercises, it is recommended they provide a written note of this to the Planning Service, in order this is retained on the planning file. This should also be reported to Committee.
- l) Where a councillor sitting on the Planning Committee, which would determine any proposal once it is submitted, decides to participate in a community engagement exercise, and has expressed a particular viewpoint, which could be seen as prejudicial or having formed a view on the application, the councillor must declare the interest and leave the room whilst the application is determined, unless they decide to make representations to the Committee under the normal public speaking arrangements. This involvement should also be minuted.

9.7 The same rules apply to meetings and discussions once a planning application has been made.