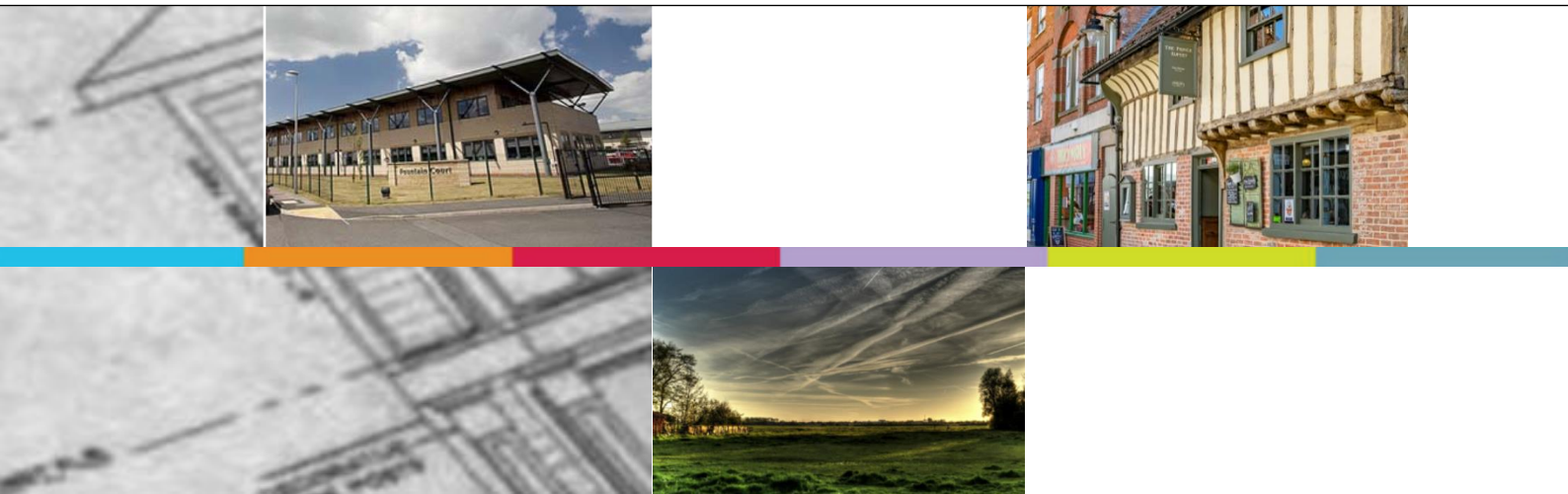


# Protocol for Planning Committee

Effective from 8<sup>th</sup> April 2024



## Version Control

Version	Date	Change
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## **PROTOCOL FOR DEALING WITH PLANNING MATTERS**

### **1.0 Introduction**

- 1.1 One of the key purposes of the planning system is to regulate the development and use of land in the public interest.
- 1.2 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework. Planning necessarily affects land and property interests and as a consequence decision can often be highly contentious.
- 1.3 The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.
- 1.4 The aim of this Protocol is to ensure that the planning process is undertaken in a fair, impartial and transparent way and so there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 1.5 This Protocol applies at all times when Members, Council Officers and the public are involved in the planning process. This includes meetings of the Planning Committee, meetings of the Council when exercising the functions of the Planning Authority and less formal occasions, such as meetings with Officers or the public and consultative meetings. It applies to planning enforcement matters, to site specific policy issues and to the making of compulsory purchase orders on planning grounds.
- 1.6 This protocol does not constitute legal advice.

IF YOU HAVE ANY QUERIES OR CONCERNS ABOUT THE APPLICATION OF THIS PROTOCOL TO YOUR OWN CIRCUMSTANCES YOU SHOULD SEEK ADVICE EARLY FROM THE MONITORING OFFICER OR DEPUTY MONITORING OFFICER AND PREFERABLY WELL BEFORE ANY MEETING TAKES PLACE

### **2.0 Relationship to the Members Code of Conduct**

- 2.1 The Council has adopted a local Member Code of Conduct which reflects the seven principles of public life, also known as the Nolan Principles. These principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership. This Code of Conduct for Members can be found in the Council's Constitution.
- 2.2 This Protocol is intended to supplement the Code of Conduct for Members where Members are involved in the planning process.
- 2.3 The rules set out in the Code of Conduct for Members must be applied first and must always be complied with.
- 2.4 Where a Member does not abide by the Code of Conduct for Members and/or this Protocol when involved in the planning process it may put the Council at risk of challenge on the legality of any decision made or at risk of a finding of maladministration.
- 2.5 The failure is also likely to be a breach of the Members Code of Conduct and may be the subject of a complaint to the Standards Committee.

MEMBERS SHOULD APPLY COMMON SENSE IN THE INTERPRETATION OF THIS PROTOCOL

### **3.0 The General Role and Conduct of Members and Officers**

- 3.1 Members and Officers have different but complementary roles. Both serve the public, but Members are responsible to the electorate whilst Officers are responsible to the Council as a whole. Officers advise Members and the Council and carry out the Council's work. They are employed by the Council, not by individual Members. A successful relationship between Members and Officers will be based upon mutual trust, understanding and respect of each other's position. The Council has adopted a Protocol giving guidance on relationships between Officers and Members which can be found in the Council's Constitution.
- 3.2 Both Members and Officers are guided by their respective codes of conduct contained in the Council's Constitution. The Code of Conduct for Members and its relationship to this Protocol are set out in section 2 above.
- 3.3 Planning Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct breaches of which may be subject to disciplinary action by the Institute. Officers from the Legal Team who are qualified solicitors are regulated by the Solicitors Regulation Authority (SRA) and must uphold the SRA Principles.
- 3.4 In addition to these codes, the Procedure Rules found in the Council's Constitution set down rules which govern the conduct of Council business.
- 3.5 Members and Officers should view with extreme caution any offer of gifts or hospitality, with a view to not only avoiding impropriety but also any perception of impropriety. The Council has adopted separate protocols for Officers and for Members giving guidance on gifts and hospitality and outlining specific requirements in relation to the acceptance of gifts or hospitality.
- 3.6 Serving Members who act as agents for people pursuing planning matters within the District should not be Members of the Planning Committee.
- 3.7 Members and particularly those serving on the Planning Committee are required to receive training on planning when first appointed to the Planning Committee and before they can take any planning decisions. Members should then receive training a minimum of once annually thereafter.
- 3.8 Care needs to be taken in the use of social media by Members and Officers, especially where any posts could relate to decision making functions. Members should be mindful that posts or comments made on social media, in any capacity by Members, could be perceived by Members of the public that a Member is predetermined or biased. The Social Media Protocol for Members can be found in the Council's Constitution.
- 3.9 Members should not participate in social media or exchanges by texting as a Member of the committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias.

### **4.0 Registration and Disclosure of Interests**

The Code of Conduct for Members sets out detailed requirements for the registration and disclosure of disclosable pecuniary interests and details of other interests. This Protocol should be read as supplementary to these requirements for registering interests. Members should not participate in any decision and should leave the meeting where they have a disclosable pecuniary interest unless they have first obtained a dispensation.

4.2 In addition, unless they have obtained a dispensation they should: -

- **NOT** participate or give the appearance of trying to participate in the making of any decision on the matter by the Council as Local Planning Authority

- **NOT** get involved in the processing of the application
- **NOT** use their position to discuss the proposal with Officers or Members when other Members of the public would not have the opportunity to do so or in any other way seek or accept any preferential treatment or give the appearance of so doing.

4.4 In addition, the Code requires Members to consider whether they have any Other Registrable Interests or Non-Registrable Interests

4.5 In the event that a Member considers that they have an Other Registrable Interest or Non-Registrable Interests in any matter, they should disclose the existence and nature of the interest at or before the consideration of that item of business or as soon as the interest becomes apparent.

4.6 The Member then needs to consider very carefully whether it would be appropriate to participate in discussion and voting on the matter and the requirements in the Code. They should think about how a reasonable Member of the public, with full knowledge of all the relevant facts would view the matter when considering whether their participation would be appropriate.

## **5.0 Predisposition, Predetermination or Bias**

5.1 Planning issues must be assessed fairly and on their planning merits, the decision-making process must be seen to be fair and impartial from the perspective of an external observer. To protect the rights of planning applicants and to preserve the integrity of committee decisions, it is vital that Members do not make up their minds before they have all relevant materials and arguments before them at the Planning Committee meeting.

5.2 Members must not come to a meeting with a closed mind or appear to have a closed mind. Members must maintain an open mind whilst they hear any speakers, the Officer's presentation and other evidence at the Planning Committee when the matter is considered. This is particularly important if a Member is contacted by an external interest or lobby group.

5.3 If a Member has made up their mind prior to the meeting and is not able to reconsider their previously held view then they are predetermined. They will not be able to participate in the decision making of the matter by the Planning Committee because if they did take part in the discussion or vote it would put the Council at risk in a number of ways. Firstly, it would probably, in the view of the Local Government Ombudsman, constitute maladministration. Secondly, the Council could be at risk of legal challenge and leave a decision of the Planning Committee vulnerable to Judicial Review.

5.4 Predisposition is where a Member may have a pre-existing opinion or attitude about the matter under discussion but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. Members are able to feel predisposed towards a particular decision but must still be able to consider and weigh relevant factors before reaching their final decision. Predetermination arises when Members' minds are closed, or importantly, reasonably perceived to be closed, to the consideration and evaluation of the relevant factors. Section 25 of the Localism Act 2011 provides that a Member should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. For example, a Member who states "*wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before committee*" has a closed mind. A Member who states "*many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area*" does not have a closed mind although they are predisposed towards opposing such applications.

5.5 Members may take part in the debate on a proposal when acting as part of a consultee body (i.e., where they are also a Member of the County or host Parish Council as well as being a Member of the Council) provided that: -

- They make clear during discussion at the consultee body that: -
  - (i) Their views are expressed on the limited information before them only; and
  - (ii) They will reserve judgement and the independence to make up their own mind on each separate proposal when it comes before the District Council's Planning Committee, and they have heard all the relevant information; and
  - (iii) They will not in any way commit themselves as to how they or others may vote when the proposal comes before the District Council's Planning Committee.

5.6 In the interests of transparency, the Member should, in such circumstances, disclose the personal interest regarding their Membership of the consultee body when the District Council's Planning Committee comes to consider the proposal.

5.7 Where a Member has already made up their mind ("fettered their discretion") and therefore declines to speak or vote on a proposal, they do not also have to withdraw (unless required due to an interest and have not obtained a dispensation) but it is preferable to do so.

5.8 If a Member decides to stay in the meeting, they should explain that they do not intend to speak and vote because they have (or could reasonable be perceived as having) judged the matter elsewhere, and why they have decided not to withdraw, so that this may be recorded in the minutes.

5.9 Members who have participated in the development of planning policies and proposals need not and should not normally exclude themselves from decision making on individual applications for that reason.

## **6.0 Development Proposals Submitted by Members and Officers and Council Development**

Proposals submitted by serving and former Members, Officers or their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals.

6.2 Such proposals must be handled in a way that gives no grounds for accusations of favouritism. In particular: -

- If a Member or Officer submits their own proposal to the Council, they should play no part in its consideration.
- The Council's Monitoring Officer should be informed of any proposal submitted by any Member, or any Officer employed by the Council on the grade of Business Manager or above or any Officer who could otherwise have been involved in processing or determining the application.
- Such proposals should be reported to the Planning Committee and not dealt with by Officers under delegated powers.

6.3 A Member will have a disclosable pecuniary interest in their own application and should not participate in its consideration. They have the same rights as any applicant in seeking to assist in the consideration of their application but the Member, as applicant, should also not seek to improperly influence the decision.

6.4 Proposals for the Council's own development should be treated with the same transparency and impartiality as those of private developers.

## 7.0 Lobbying of and by Members

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their Ward Member or to a Member of the Planning Committee. The Nolan Committee's 1997 report stated: *"it is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the Members themselves"*.

- 7.2 Lobbying can, however, lead to the impartiality and integrity of a Member being called into question, unless care and common sense is exercised by all the parties involved.
- 7.3 When being lobbied, Members and Members of the Planning Committee in particular, should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments.
- 7.4 In such circumstances, Members should consider restricting themselves to giving advice about the process and what can and cannot be taken into account.
- 7.5 Members can raise issues which have been raised by their constituents with Officers.
- 7.6 If a Member does express an opinion to objectors or supporters, it is good practice to make it clear that they will only be in a position to make a final decision after having heard all the relevant arguments and having taken into account all relevant material and planning considerations at Planning Committee.
- 7.7 If any Member, whether or not a Planning Committee Member, speaks on behalf of a lobby group at the Planning Committee, they should withdraw from the meeting once the opportunity to make representations has been completed in order to counter any suggestions that Members of the Committee may have been influenced by their continuing presence.
- 7.8 In no circumstances should planning decisions 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.
- 7.9 Planning Committee Members and Members of the Planning Policy Board in general should avoid organising support for or against a planning application and should not lobby other Members.
- 7.10 Members 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 Officer's impartiality or professional integrity. This would be contrary to the Member Code of Conduct.
- 7.11 Members should pass any lobbying correspondence received by them to the Business Manager – Planning Development at the earliest opportunity.
- 7.12 Any offers made of planning gain or restraint of development, through a proposed S106 Agreement or otherwise should be referred to the Business Manager – Planning Development.
- 7.13 Members should not accept gifts or hospitality from any person involved in or affected by a planning proposal.
- 7.14 Members should inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches, including inappropriate offers of gifts or hospitality, who will in turn advise the appropriate Officers to follow the matter up.



## 8.0 Requests to Refer Items to Planning Committee

8.1 District Members may wish to request the referral of sensitive or controversial planning applications, that would otherwise be delegated to Officers, for decision by the Planning Committee. Members can submit a referral request for any planning applications within their Ward in accordance with paragraph 8.3. Adjoining Ward Members may also refer applications where the application site is within 100 metres of the Ward boundary and/or would have significant impact upon that adjoining Ward. Applications subject to strict time limits for determination are excluded and include prior notification and/or approvals, works.

8.2 Referrals should be made, in writing and setting out the reasons for the referral, as soon as possible after the date a valid application is submitted to avoid unnecessary delays in determining applications, but within 21 days (excluding bank holidays) of the distribution of the weekly list or within 10 days of notification of significant amendments to applications. Referrals can only be made once an application has been validated.

8.3 A referral request **must be** based on the following circumstances:-

- a) The application has attracted an unusually high level of public interest raising material planning considerations to the development being considered, which might be reflected in the number of letters or emails, or a petition received in connection with the application;
- b) There has been a recent and significant change of planning policy (either at national or local level) which would result in a different recommendation being made in respect of an application than would previously have been the case;
- c) The application has wider ramifications of more than just local interest;
- d) Any other reasons based on individual planning merits and circumstances of the application;
- e) For referrals by Adjoining Ward Members where the application, in their opinion, would have a material planning impact on the whole or part of their ward (8.1) the referral request shall include a reason or reasons as to how the application will have a material planning impact on their Ward.

8.4 A referral **should not** be made in the following circumstances:-

- a) To resolve a disagreement between an applicant and the objector(s) to an application; or
- b) Because the applicant considers that there is more likelihood of a grant of permission if the application is referred to the Committee for a decision; or
- c) Because the objectors to an application consider that there is more likelihood of a refusal of permission if the application is referred to the Committee for a decision; or
- d) Because the applicant/objector does not agree with the advice given by a Planning Officer.
- e) Ward (or Adjoining) Members who have referred an application to Planning Committee are able to speak to the Planning Committee in accordance with the procedures set out at Section 11.0 Consideration of Business on the Public Agenda.

8.5 Referral requests by the Ward Member should set out in writing, preferably email:

- a statement outlining material planning reasons why the proposal needs to be considered by Committee i.e. how it falls within the criteria set out in 8.3;

- a list of related Development Plan policies (or part of) and, where applicable, national planning policies (including paragraph numbers).

8.6 Referral requests by Adjoining Ward Members must, in addition to the criteria in 8.5, also set out how:

- in their opinion the application would have a material planning impact on the whole or part of their ward (or the District as a whole or part) having regard to the nature of the development, and
- shall notify the relevant host Ward Member(s) prior to the referral.

Should amendments be received including plans/documents that are subject to re-consultation/notification which result in new material planning impacts not previously notified of, the relevant Ward Member or adjoining Ward Member may refer the application to Planning Committee within 10 days of the notification and subject to the referral criteria set out within this Protocol.

Exceptions to the referral process are those applications which are subject to strict time limits for determination including, but not limited to, Works to Trees in a Conservation Area, Prior Notifications, Prior Approvals and Certificate of Lawfulness proposals.

## 9.0 Pre-Application Discussions

9.1 Pre-application discussions between a potential applicant and the Council can benefit both parties and are therefore encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

9.2 Members have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving Members can help identify issues early on, helps Members to lead on community issues and helps to ensure that issues do not come to light for the first time at Planning Committee. Officers must therefore consider involving the local Ward Member(s) particularly in relation to major applications and where a Development Consultation Forum does not apply (refer paragraph 9.3 below). However, in order to avoid perceptions that Members might have fettered their discretions, such discussions should take place in accordance with the following guidelines: -

- (i) It should be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- (ii) It should be acknowledged that consistent advice should be given by Officers based upon the development plan and material planning considerations.
- (iii) Officers should be present with Members in pre-application meetings. Members should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage.
- (iv) Members should not become drawn into any negotiations which should be done by Officers (keeping interested Members up to date) to ensure that the Council's position is co-ordinated.
- (v) A written note should be made of all meetings. An Officer should make the arrangements for such meetings, attend, and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate

reason for confidentiality regarding a proposal, a note of the non-confidential issues raised, or advice given can still normally be placed on the file to reassure others who are not party to the discussion.

- (vi) Care should be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to Committee could appear to be advocacy.

- 9.3 Some pre-application and pre-decision proposals are of a scale or complexity, for example, whereby engaging with Members, Town/Parish Councils and Meetings as well as the public can be of benefit to enable wider understanding. Such proposals will be, with the agreement of the Business Manager – Planning Development, Chairman and Vice Chairman of Planning Committee in consultation with the Ward Member(s), recommended to be presented via a Development Consultation Forum (“DCF”). Such Forum’s will enable wider engagement in accordance with the Council’s Statement of Community Involvement. They will not be a decision-making meeting. The purpose, process and schemes that might be eligible are detailed within the document [‘Development Consultation Forums, Guidance for Developers and Public’](#). The Chairman of the DCF will be agreed prior to the meeting being held and will be either a District Member or Officer of the Planning Development department.
- 9.4 Although the term “pre-application discussions” has been used, the same consideration should apply to any discussions which occur before a decision is taken.
- 9.5 Common sense should be used by Members in determining the scale of the proposals to which the guidelines set out in 9.2 above will apply. Members talk regularly to constituents to gauge their views on matters of local concern. Keeping a register of such conversations would be neither practical nor necessary. If for example a Member is approached by an applicant or an objector in respect of what could reasonably be considered to be a minor application, it would be more appropriate for the Member concerned to give advice on process only and what can and cannot be taken into account (see paragraph 12.14) and to refer the constituent to a planning Officer if they need planning or technical advice.

## **10.0 Officer Reports to Committee**

- 10.1 Officer reports to Committee should be comprehensive and should include a summary of the substance of any objections and other responses received to the consultation. Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations and any other material planning considerations.
- 10.2 Reports should have a written recommendation for a decision to be made and should contain technical appraisals which clearly justify the recommendation.
- 10.3 Reports should be read in full by the Members sat on Planning Committee ahead of the meeting.
- 10.4 If the reports recommendation is contrary to the provisions of the development plan the reasons must be stated clearly. Determinations must be made in accordance with the development plan unless material considerations indicate otherwise<sup>1</sup>.
- 10.5 Any oral updates or changes to the report should be recorded within the minutes.

## **11.0 Consideration of Business on the Public Agenda**

All applications to be decided by the Planning Committee will be dealt in line with the Committee Procedure Rules contained within the Council’s Constitution and as follows:

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<sup>1</sup> S.38(6) of the Planning and Compensation Act 2004 c.5\*

\*Subject to amendments under s.93 of the Levelling-up and Regeneration Act 2023 c.55

- i. Members who have pre-determined the proposal or have a Disclosable Pecuniary Interest (DPI) will be required to leave the meeting whilst the relevant agenda item is debated. Officers with a DPI will also be required to leave.
- ii. The Chairman will announce the agenda item number.
- iii. The Planning Officer will introduce the application with any relevant updates and provide a visual presentation to aid Members' understanding of the context of the application.
- iv. The Chairman will propose and another Member of the Planning Committee, usually the Vice Chairman will second the Officer recommendation (noting that this does not fetter their ability to vote to the contrary after taking all relevant matters into account).
- v. The Speakers will then be invited by the Chairman to address the Committee from an allocated desk in the following order:
  - i. Objector(s)
  - ii. Statutory Consultee
  - iii. Parish/Town Councillor
  - iv. Applicants or their Agent, or supporter
  - v. Ward Member

Each speaker will be limited to a maximum of 3 minutes.

- vi. The Chairman will invite Officers to respond to any points raised by the speakers for clarification.
- vii. The Chairman will then ask Members if they have technical questions of Officers.
- viii. The Planning Committee will then discuss/debate the application.
- ix. Members may seek further clarification of: -
  - a) particular points from Officers, regarding the application; or
  - b) on points raised by speaker(s), in the main debate, through the Chairman. Officers will respond to issues and questions raised by Members.
- x. The Committee will then make a decision by vote.
- xi. Refusals, contrary to Officer recommendation will, alongside recording each Member's vote, also record the proposer and seconder for the refusal.

11.2 In most cases the debate is heard in public. However, occasionally, the Committee may need to go into closed session, which excludes the press and public, to consider information that is confidential or exempt from publication. If this happens, the Committee will pass a resolution to that effect and any participant who is not a Member of the committee or Officer of the Council will be asked to leave the meeting.

## **12.0 Public Speaking at Planning Committees**

### **General Principles**

12.1 The primary intention is to allow Members of the public, agents, supporters, Parish/Town Councillors, and Newark and Sherwood District Members to speak to the Planning Committee on a specific planning

application before the Committee and bring to the Committee's attention concerns already raised during the statutory consultation process.

- 12.2 Although Planning Committee meetings are held in public, they are not public meetings; as a result, a person, who is not attending as a Member or Officer of the committee, may only speak to the committee if they have registered to speak as shown below.
- 12.3 Please note that this Protocol does not interfere with the right of a Member, who is attending as a Member of the Committee, to address the Committee on any application submitted for consideration.
- 12.4 Speakers are expected to make verbal presentations only. Speakers may not circulate statements, papers, photographs or other documents or make slide presentations at meetings of the Committee.
- 12.5 Messages should never be passed to individual committee Members, either from other Members or from the public. This could be seen as seeking to influence that Member improperly and will create a perception of bias that will be difficult to overcome.
- 12.6 Speeches made at the Committee will not be recorded in the minutes of the meeting verbatim.
- 12.7 Who May Speak to a Planning Committee Meeting

#### All Speakers

- (1) A request to address a specific committee meeting will only be accepted if it relates to a planning application included in the agenda for that meeting.
- (2) No speaker is allowed to address the Committee more than once or for more than 3 minutes.

#### Members of the Public, Agents, and Applicants

- (3) Any member of the public, agent, and/or applicant may address the Committee subject to the rules of this Protocol. Only Members of the public who have made representation to the application at the time of the agenda being printed will be permitted to speak unless otherwise agreed by the Business Manager - Planning Development in consultation with the Chairman and/or Vice-Chairman of Planning Committee.

#### Ward Members

- (4) Subject to 12.8(5) below a Newark & Sherwood District Member, who is not attending the Committee as a Member of the Committee and represents the Ward within which the application site is wholly or partially situated may address the Committee.
- (5) A Member shall also have the right to make representations for applications outside their Ward area in circumstances where the application site is within 100m of the Ward boundary and it can clearly be demonstrated to the satisfaction of the Business Manager – Planning Development in consultation with the Chairman and/or Vice-Chairman of the Planning Committee that the application will have a material impact on the whole or part of their ward area.

#### Parish/Town Councillor

References to Town/Parish Councils shall include Parish Meetings.

- (6) Subject to 12.8 below, any Parish/Town Councillor or the clerk who represents the Parish or Town Council within which the application site is wholly or partially situated may address the Committee. As such they will be bound by their own Authority's rules on conduct. Any professional agent or other third party appointed by the Town/Parish Council shall have no right to speak at Committee.

- (7) An adjoining Parish/Town Councillor or clerk wishing to speak to Planning Committee may do so when it can be demonstrated to the satisfaction of the Business Manager – Planning Development in consultation with the Chairman and/or Vice-Chairman of the Planning Committee that the application will have a material impact on the whole or part of their parish/town area and the host Parish/Town Councillor or clerk is not registered to speak.

#### Statutory Consultees

- (8) Any statutory consultee who has made representation to the application as defined by the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) or internal consultee to the Council. However, other consultees who are not statutory may be permitted to speak with the agreement of the Business Manager – Planning Development in consultation with the Chairman and/or Vice-Chairman of the Planning Committee.

### 12.8 Registering to Speak

#### All Speakers

- (1) All requests to address the Committee must be in writing. These should be via completion of the following [online form](#). General enquiries may be sent to the Democratic Services Team by emailing:

[committees@newark-sherwooddc.gov.uk](mailto:committees@newark-sherwooddc.gov.uk)

or by letter sent to:

Democratic Services Team, Newark & Sherwood District Council, Castle House, Great North Road, Newark, NG24 1BY

- (2) It is strongly recommended that speakers submit requests via the online form as these can be picked up more quickly.

#### Members of the Public, Agents, Applicants, Supporters, Parish/Town Councillors and/or Statutory Consultees

- (3) Requests to speak at the Committee must be received by Democratic Services Team by no later than 72 hours before the start of the meeting
- (4) The following information is required when registering to speak at the Committee:
- Contact details, including email address, of the person(s) or organisation(s) who will be addressing the meeting
  - application number and details of the relevant application
  - whether the speaker is supporting or opposing the application
  - that the speaker is happy for their details to be shared with others who register the same request to speak.

#### Ward Members

- (5) Any Member wishing to exercise their right to speak under this provision shall be required to first notify the Council's Democratic Services team 72 hours before the meeting that they wish to make representations and, if the application site is outside their ward area but within 100m of the boundary, the reasons why they consider that the application will have a material impact on the whole or part of their ward area.

(6) The following information is required when registering to speak at the Committee:

- application number and details of the relevant application
- whether the deputation is support or opposition of the application

#### 12.9 Failure to Register to Speak

If a speaker does not register in full accordance with Section 12.8 above, they will not be allowed to speak, and the Committee will decide the application without their involvement.

#### 12.10 Limit on the Number of Speakers

Members of the Public, Agents, Applicants and Parish/Town Councillors

- (1) In the event that more than one person wishes to speak as an objector, we will arrange to put them in touch with the other interested people so that they can agree between them who should speak on behalf of all the objectors. In the event that agreement cannot be made, the person in closest proximity to the application site will have the right to speak. Should those wishing to speak be the same distance from the application site, the first person to register as an objector will have the right.
- (2) Only one person can speak in support of an application. Priority will be given to the applicant or their agent. In the event that more than one person wishes to speak and they are not the applicant or their agent, the same process as set out in 12.10(1) will take place.
- (3) Only one Parish/Town Councillor will be able to speak to the Committee on each application. The host Parish/Town Councillor will have the right to speak in the event more than one wishes to speak.

Ward Members

- (4) Subject to 12.8(5), only one Ward (or Adjoining) Member can speak on each application except where there are opposing views. The Ward Member will have the right to speak in the event that Ward and Adjoining Ward Members wish to speak. In the event that more than one Ward (or Adjoining) Member wishes to speak, the first to register will have the right.

Statutory Consultees

- (5) One representative for each Statutory Consultee is able to speak.

#### 12.11 Notification of speaking

All those who have registered to speak will be notified 48 hours in advance of the meeting by Democratic Services. The notification will confirm whether or not the request has been accepted i.e. whether it complies with the criteria above.

#### 12.12 Speech Texts

All Speakers

- (1) Speakers are permitted to make verbal representations only; slides or any other audio or visual presentations are not permitted.
- (2) Speakers may, if they wish, send a written copy of their proposed speech to the Democratic Services Team before the start of the meeting. Subject to below, such texts will not be

circulated to Members or Officers of the Council but will be referred to in the minutes of the meeting and published after the meeting has ended as shown in paragraph 12.12(3) below.

- (3) Speeches are not recorded verbatim in the minutes of the meeting. A speech will be recorded as follows:

Where a speaker does not submit a copy of their speech to the Council before the start of the meeting:

*“The Committee was addressed by XXX, who spoke in support/against the application”*

Where the speaker submits a copy of their speech prior to the start of the meeting:

*“The Committee was addressed by XXX, who reiterated the issues set out in the summary text of their speech submitted prior to the meeting, which had been published on the Council’s website”*

- (4) If a speaker does not attend the meeting, any written text summarising the intended speech submitted by, or behalf of the speaker will not be considered by the Committee or referred to in the minutes, unless it is received prior to the closing of receipt of late representations, refer paragraph 12.19.

### 12.13 What should be included in a speech

#### All Speakers

- (1) It is important to remember that the Planning Committee can only consider certain issues when deciding a planning application. To help you make the most of the time you have been allocated to speak, we have provided examples below of what can and cannot be considered, this is not an exhaustive list.

MATERIAL PLANNING CONSIDERATIONS	NON-MATERIAL CONSIDERATIONS
Design and visual impact	The applicant or agent
Privacy / daylight / sunlight	Land ownership
Noise, smell, pollution	Private rights e.g. access/covenants
Access / traffic	Need (with some exceptions)
Health / health and safety	Property value
Ecology, landscape	Competition
Crime (and fear of)	Loss of view
Economic impact	“moral” issues (e.g. gambling)
Planning history / related decisions	Numbers of representations
Fallback position e.g. PD Rights	Change from previous scheme
Cumulative impact	Building regulation issues



Viability of the development “	“better” use or “better” site
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- (2) We strongly recommend that you prepare your speech in advance so that you are able to make all your points in the time available.
- (3) Speakers should avoid defamatory comments in their speech or speech text. If a speaker says or writes something defamatory in public, they may be at risk of legal action.

Parish/Town Councillors

- (4) A Parish/Town Councillor or their nominated representative shall put forward views or representations which reflect the views of the Parish Council which they are representing. They shall not be entitled to put forward personal views or opinions or views which differ from those of the Parish Council which they represent.
- (5) A Parish Meeting shall have the same rights to appoint a representative to speak on their behalf as a Parish Council provided that they are able to evidence that they are reflecting the views of the Parish Meeting (for example as recorded in the minutes of the Parish Meeting) rather than their personal views.

Statutory Consultees

- (6) A statutory consultee shall put forward views or representations which reflect the views of the Consultee which they are representing. They shall not be entitled to put forward personal views or opinions or views which differ from those of the Consultee which they represent.

12.14 Time Limits for Speakers

All Speakers

- (1) The time limits will be strictly followed and cannot be exceeded. All speakers must stop when requested to do so by the Chairman.

Members of the Public, Agents, Applicants, Supporters, Parish/Town Councillors-and Statutory Consultees

- (2) There will be a maximum speaking time of three minutes allocated for each speaker,

Ward Members

- (3) A ward Member will not be permitted to speak for longer than 3 minutes. Ward Members are encouraged to contact the Planning Officer prior to the Committee meeting to clarify any factual issues with the planning application and raise any queries relating to the content of the report to Committee.

12.15 Right to Appoint a Representative

Members of the Public, Agents, Applicants, Supporters, Parish/Town Councillors-and Statutory Consultees

- (1) A speaker may appoint another person to speak in their place if they notify the Democratic Services Team of the change at least 24 hours before the meeting is due to start. The other party appointed must have made a representation prior to the agenda being published or be either the applicant or the agent on the application.

## Ward Members

- (2) A Ward Member may appoint another Ward Member to speak in their place provided that:
  - (a) the Member is not attending as a Committee Member;
  - (b) they notify the Democratic Services Team of the change at least 24 hours before the meeting is due to start.

### 12.16 Failure of Speakers to attend the Committee

#### All Speakers

- (1) If a registered speaker or their representative does not arrive at the meeting before the Committee begins, the Committee will continue to consider and determine the application in their absence.

### 12.17 Deferral of an Application

#### All Speakers

- (1) If an application is deferred to be considered at a later meeting, any person wishing to speak will need to apply again.

### 12.18 Procedure for Speakers at the Meeting

- (1) Committee meetings will start at the time and be held at the venue advertised on the Council's website.
- (2) All speakers are recommended to arrive 10 minutes before the start of the meeting. A Member of the Democratic Services Team will be there to greet speakers and explain the procedure, including how to use the microphone.
- (3) No written material, photographs or diagrams or other papers may be distributed by speakers at the meeting itself.
- (4) Speakers cannot give slide or video presentations at the meeting.
- (5) All speakers will be requested to return to the public seating area after they have made their representation. Once the speakers have returned to the public seating area, they are not permitted to enter the debate further. Following the speeches, the Chairman will invite the case Officer to provide any further comments.

12.19 All representations received up to midday 2 days before the Planning Committee meeting will be reported to Planning Committee by means of a late paper summarising any late representations received in respect of items on the agenda for the Committee. Representations received after this time will be considered by Officers as to whether they raise any new material planning considerations not considered as part of the agenda report. Should any representation raise new material planning considerations, the Business Manager – Planning Development or other Authorised Signatory will consider whether the item (development proposal) should be withdrawn from the agenda to enable the matter(s) to be properly considered and addressed in a future report.

12.20 New documents should not be circulated to the Committee. Members may not be able to give proper consideration to the new information and Officers may not be able to check for accuracy or provide considered advice on any material considerations arising.

### 13.0 Decisions Which Differ from an Officer Recommendation

- 13.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the National Planning Policy Framework (NPPF)) indicate otherwise <sup>2</sup>. This currently has a pending amendment as follows: “... determination must be made in accordance with the development plan and any national development management policies, taken together, unless material considerations *strongly* indicate otherwise”<sup>3</sup>. Decisions will then be required to be considered in accordance with this, once it is in force.
- 13.2 This applies to all planning decisions. Any reasons for refusal and any approval must be justified against the development plan and other material considerations.
- 13.3 The courts have expressed the view that the Planning Committee’s reasons should be clear and convincing. The personal circumstances of an applicant or any other non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.
- 13.4 Planning Committees can, and often do, make a decision which is different from the Officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.
- 13.5 The Planning Committee should take the following steps before taking a decision which differs from an Officer recommendation: -
- (i) Record the detailed reasons as part of the mover’s motion
  - (ii) If necessary, adjourn for a few minutes for those reasons to be discussed and then agreed by the Committee
  - (iii) Ensure that a recorded vote is taken, recording the individual names of those voting for and voting against the motion and the names of those abstaining.
- 13.6 If the Planning Committee makes a decision contrary to the Officer’s recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the Committee’s reasons shall be made, and a copy placed on the application file. A number of appeals are confined in the documents that can be used to defend it (Officer report and Committee minutes only). Members should be prepared to explain in full their planning reasons for not agreeing with the Officer’s recommendation. The precise wording of such conditions or S106 obligations or reasons for refusal shall be delegated by the Planning Committee to the Authorised Officers.
- 13.7 The Officer(s) shall also be given an opportunity to explain the implications of the contrary decision should one be made.
- 13.8 Applications which are refused contrary to Officer recommendation and subsequently appealed may be required to be defended by either and/or both the proposing or seconding Member to the resolution or any other Member who is willing to defend the Council’s decision.
- 13.9 All applications that are clearly contrary to the development plan and constitute notifiable departures must be advertised as such and are known as “departure” applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

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<sup>2</sup> s.38 Planning and Compulsory Purchase Act 2004 c.5

<sup>3</sup> Section 93 of [Levelling-up and Regeneration Act 2023](#)

13.10 The application may then have to be referred to the relevant Secretary of State, depending upon the type and scale of the development proposed (S77 of the Town and Country Planning Act 1990). If the Officer's report recommends approval of such a departure, the justification for this should be included, in full, in that report.

## **14.0 Committee Site Visits**

14.1 Committee site visits do not constitute formal meetings of the Council but rather their purpose is to enable Members to observe the site and to gain a better understanding of the issues. Accordingly, attendance by Members at Committee site visits is not essential and non-attendance will not preclude a Member from discussing and voting on the relevant matter at the Planning Committee meeting. Notwithstanding this, Members should make every effort to attend where it is considered that a site visit is necessary and appropriate. In addition, any relevant information which Members have gained from the site visit will be reported back to the Committee so that all Members have the same information.

14.2 Site visits should only be conducted where the benefit is clear and substantial. Officers will have visited the site and assessed the scheme against policies and material considerations already. A site visit should not take place unless:

- (i) There are particular site factors which are significant in terms of the weight attached to them relative to other factors if they would be difficult to assess in the absence of a site inspection; or
- (ii) There are specific site factors and/or significant policy or precedent implications that need to be carefully addressed; or
- (iii) The impact of the proposed development is difficult to visualise; or
- (iv) The comments of the applicant and/or objectors cannot be expressed adequately in writing; or
- (v) The proposal is particularly contentious, and the aspects being raised can only be viewed on site.

14.3 A record should be kept of the reasons why a site visit is called. It is important that the Council adopts a clear and consistent approach on when and why to hold a site visit and how to conduct it to avoid accusations that visits are arbitrary, unfair or a covert lobbying device.

14.4 Only Members of the Planning Committee and Officers should participate in site visits. Planning Committee Members should not attend a site visit where they have either an interest in the site as set out in Section 7.0 Lobbying of and by Members of this Protocol and within the Council's Constitution and/or will not be taking part in the debate or the vote for reasons set out within Sections 4.0 Registration and Disclosure of Interests or Section 5.0.

14.5 The applicant may be present on site but should be kept a discreet distance away from the Planning Committee Members and Officers so that they cannot be a party to any comments or questions raised. Upon the refusal of the applicant to respect this requirement, the Committee shall leave the site immediately.

14.6 Members should not express opinions or views at the site meeting but may ask Officers present questions or seek clarification from them on matters which are relevant to the site investigation.

14.7 Under no circumstances should the site visit Members hear representations from any party. If any Member present at a site visit is approached by the applicant or a third party, they should advise them that they should make representations in writing to the Council and should direct them to, or inform the Officer present. Any late correspondence received will be dealt with as set out in paragraph 12.19.

14.8 Once a Member becomes aware of a proposal, they may be tempted to visit the site alone. In such a situation, a Member is only entitled to view the site from public vantage points, and they have no individual rights to enter private property. Any request by the owner/occupier of a site to enter on to a

premise or by a neighbour to view a site from their premise should be strongly resisted to avoid the risk of the owner/occupier/neighbour trying to influence that Member improperly, potentially creating a perception of bias and risk of legal challenge or allegation of maladministration.

## **15.0 Voting at Committee**

15.1 Any Member who is not present throughout the whole of the presentation and debate on any item shall not be entitled to vote on the matter. For clarity, the '*whole of the presentation and debate*' comprises only the presentation of the Case Officer, any speakers and debate on the day the application is determined. It does not include any previous presentation and/or debate of the item for either referrals or resolutions to approve subject to '...' which might include completion of a s106 planning obligation, consultations, or notifications to expire or other matter.

## **16.0 Deferral**

16.1 Members should not seek to defer consideration of any item put before the Planning Committee unless there are clear and demonstrable reasons for doing so such as a relevant planning issue arising for the first time not having been previously considered and needing further investigation.

16.2 Where a Member might otherwise be minded to seek deferral of an item by reason that they wish to seek clarification on a particular issue and/or consider that further material information is required on a particular matter or for any other substantial reason, they should seek to obtain such clarification or additional information from the relevant Business Manager or the relevant Case Officer at least two hours prior to the commencement of the Planning Committee meeting.

## **17.0 Biennial Review of Decisions**

17.1 It is good practice for Members to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

17.2 Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

## **18.0 Complaints**

18.1 Complaints relating to planning matters will be dealt with in accordance with the Council's complaints procedures.

18.2 So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by Committee and under delegated powers, and to applications, enforcement, and development plan matters.