

PLANNING COMMITTEE PROTOCOL

Introduction

1. The Council's Planning Committee carries significant responsibility. Decisions on planning matters must be made correctly, as decisions can be challenged through the courts or the Planning Inspectorate, potentially resulting in financial penalties and reputational harm for the Council.
2. This protocol is intended to ensure that planning decisions made at the Planning Committee meeting are reached, and are seen to be reached, in a fair, open and impartial manner, and that only relevant planning matters are taken into account.
3. The Planning Committee is empowered by the Borough Council, as the democratically accountable decision maker, to determine planning applications in accordance with the Council's constitution. Meetings should be conducted in an ordered way, with Councillors, Officers and members of the public understanding their role within the process.
4. If a Councillor has any doubts about the application of this protocol to their own circumstances, they should seek advice from the Council's Monitoring Officer as soon as possible and preferably well before any meeting takes place.
5. This protocol should be read in conjunction with the Council's Members Code of Conduct, Code of Practice for Councillors in dealing with Planning Applications, and the Council's Constitution and the Protocol on Member/Officer Relations.

Disclosable Pecuniary and Non- Pecuniary Interests

6. The guidance relating to this is covered in the Council's Member's Code of Conduct and Code of Practice for Councillors in dealing with Planning Applications.
7. If a Councillor requires advice about whether they need to declare an interest, they should seek advice from the Council's Monitoring Officer as soon as possible and preferably well before any meeting takes place at which they think the issue might arise.

Bias: Predetermination / Predisposition

8. In addition to being aware and taking appropriate action in relation to interests, Members of Planning Committee need to avoid any appearance of bias or of having predetermined their views before taking a decision. Avoidance of bias or predetermination or the appearance of bias or predetermination is a principle of natural justice that the decision maker is expected to adhere to.

9. The courts distinguish between predetermination and predisposition.

- **Predetermination** occurs where a Councillor approaches a decision with a closed mind and is unwilling to consider all relevant arguments and evidence. This renders the decision unlawful and vulnerable to judicial review.
- **Predisposition** means a Councillor has a prior view but remains open to persuasion and willing to change that view in light of all material considerations. Predisposition is lawful and expected in a democratic context.

10. Section 25 of the Localism Act 2011 confirms that a Councillor is not to be regarded as having a closed mind simply because they have previously done or said something that indicates what view they might take. However, the legal test remains whether a fair-minded and informed observer, having considered the facts, would conclude there is a real possibility of bias

11. Expressing an intention to vote a particular way regardless of evidence is predetermination and must be avoided. By contrast, indicating an initial view while confirming willingness to listen to all arguments and Officer advice before deciding is acceptable predisposition. For example, a Councillor who states:

- “Solar farms are blots on the landscape and I will oppose each and every solar farm application that comes before the committee”, demonstrates a closed mind and **predetermination**.
- “Many people find solar farms ugly, and I will need a lot of persuading that any more solar farms should be allowed in our area”, shows **predisposition** but an open mind.

12. This distinction is particularly important in the context of pre-application engagement. For example, the Council may facilitate presentations to Planning Committee by developers of schemes at this stage, allowing Councillors to ask questions and highlight issues such as design, impact on neighbours, or transport implications for example. Expressing views on these specific aspects is acceptable and reflects predisposition. However, Councillors must not express a firm view on whether the development as a whole should be approved or refused. Doing so could amount to predetermination. A final position should only be reached once all material considerations are available and have been properly assessed at the decision-making stage.

13. The following diagram is produced to help Councillors appreciate the range of circumstances (the following is guidance only, any specific questions should be raised with the Council's Monitoring Officer).

		Examples
Lawful	No View	Councillor has not expressed any opinion on the matter.
	Predisposition	- Manifesto pledges / comments, provided the member remains open to persuasion and considers all material at the meeting. - Policy making and setting
Unlawful	Predetermination	- Clearly expressed intention to vote in a particular way on an individual application regardless of the information or evidence presented
	Bias	- Membership of an organisation that supports or opposes particular developments or development types may give rise to perceived bias if the Councillor cannot demonstrate impartiality. - Situations where a fair-minded observer would conclude a real possibility of bias, e.g. close personal or financial interest.

Lobbying

14. Full guidance relating to this is covered in the Code for dealing with Planning Applications. If a Councillor requires advice about being lobbied, they should seek advice from the Council's Monitoring Officer as soon as possible and preferably well before any meeting takes place at which they think the issue might arise.

15. The planning system is founded upon balancing private development proposals with wider public interests, often involving strongly opposing views. Whilst lobbying is a normal part of the planning process, it must not compromise impartiality or create the appearance of bias. A Planning Committee Member who has been lobbied and wishes to support their constituents; or is a Ward Councillor and wishes to campaign for or against a proposal, will need to consider whether this is likely to be regarded as amounting to bias and going against the fair determination of the planning application. Councillors should consider the views of their constituents, but they must remain

impartial; avoiding any appearance of favouring an individual, company, group, or locality. Decisions must be firmly based on the development plan and other material planning considerations. If a Councillor has predetermined their position or has given that impression, they should avoid being part of the decision-making body for that application.

17. If a Councillor has publicly declared a fixed position or given the impression of a closed mind, they should not participate in determining the application. They may speak under the Council's public speaking procedures (as set out in paragraphs 23 to 30 below), having declared their position, but must withdraw from the Committee for that item and must not vote. Any Councillor wishing to speak under this provision must register to do so, in accordance with the public speaking procedures.

18. Participation as a Planning Committee Councillor where a Councillor is or may be perceived to be biased, in addition to the risk of a complaint against the individual Councillor, also places the decision of the Committee at risk from legal challenge. As such, if a Planning Committee Councillor considers that they are or have given the impression that they are biased or predetermined they must carefully consider whether it is appropriate for them to participate in the decision-making.

Roles at Planning Committee

20. The role of Officers at Planning Committee is to advise the Councillors on professional matters, and to assist in the smooth running of the meeting. Officers advise all Councillors impartially and carry out the Council's functions in accordance with decisions of the Council or its committees, or under delegated powers set out in the Constitution.

21. The Localism Act 2011 sets out a duty for each local authority to promote and maintain high standards of conduct by Councillors and to adopt a code of conduct. The Members Code of Conduct in the Constitution is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It embraces the standards central to the preservation of an ethical approach to Council business, including the need to register and disclose interests, as well as appropriate relationships with other Councillors, staff and the public. The Council's constitution sets down rules and orders which govern the conduct of Council business.

22. The role of Councillors at Planning Committee is not to represent the views of their constituents, but to consider planning applications in the interests of the whole Borough. When voting on applications, Councillors may therefore decide to vote against the views expressed by their constituents. Councillors may also request that their votes are recorded. A request for a recorded vote must be moved and seconded in accordance with the Rules of Procedure for Council (Section 4 of the Constitution).

Speaking at Planning Committee

23. Planning Committee meetings are held in public and members of the public are welcome to attend and observe; however, members of the public are not allowed to address the meeting unless they have an interest in a planning application and follow the correct procedure.

24. Those permitted to speak include:

- The applicant or their agent and;
- Any person, business or organisation who have submitted a representation during the consultation period;
- A Parish Councillor or Ward Councillor who have submitted a representation during the consultation period, either in support of or in objection to an application.

Where a representation has been submitted by a business, organisation or other body, a nominated representative may speak on its behalf. Ward Councillors and Parish Councillors may sometimes wish to speak at meetings even if they are not members of the committee, to represent local views. The Chair will not normally allow substitutes or comments to be made by others attending the meeting.

25. Anyone wishing to speak at Committee must register to do so in writing, providing a name and contact details, by 5pm two working days before the Committee meeting (usually the preceding Monday for Wednesday meetings). Only persons who have registered in accordance with this paragraph may address the Committee.

26. Unless the Chair determines otherwise, the consideration of each application shall proceed in the following order:

- the Planning Officer shall introduce and present the application;
- the applicant or their agent;
- any Parish Councillor or Ward Councillor who has registered to speak;
- those registered to speak in support of the application; and
- those registered to speak in objection to the application.

The total speaking time allocated to each category of speaker shall normally not exceed four minutes. Where more than one person wishes to speak within a particular category, those speakers should nominate a spokesperson or share the time allocated to that category. In exceptional circumstances, the Chair may permit additional speaking time, having regard to the need for the fair and orderly conduct of the meeting and, where appropriate, ensuring that those speaking in support of and in objection to an application are afforded an equal opportunity to be heard.

Following public speaking, the Chair will open the matter for debate by the Committee.

27. Speakers must not introduce new documents or photographs at the meeting. Councillors may not question speakers, and speakers may not question councillors, officers, or other speakers. Comments made by speakers must relate to planning issues.

28. Speakers should arrive 15 minutes before the meeting starts and make themselves known to the Committee Clerk who will explain the procedure.

29. Other than as detailed above, no person is permitted to address the Planning Committee and interruptions to the proceedings will not be tolerated. Should the meeting be interrupted, the Chair of the Committee will bring the meeting to order. In exceptional circumstances the Chair of the Committee can suspend the meeting, or clear the chamber and continue behind closed doors, or adjourn the meeting to a future date.

30. Where members of the public wish to leave the chamber before the end of the meeting, they should do so in an orderly and respectful manner, refraining from talking until they have passed through the chamber doors, as talking within the foyer can disrupt the meeting. To maintain the orderly conduct of the meeting and avoid any perception of improper influence, Councillors should not leave the meeting to accompany attendees from the chamber or engage in substantive discussions with applicants, objectors, supporters or other attendees whilst the meeting remains in progress.

Late Representations

31. Where information is received after publication of the committee agenda which, in the opinion of the Assistant Director - Development or other authorised officer, raises a material planning consideration or significant new information not previously identified or addressed within the officer report, officers shall determine what action is appropriate having regard to the nature of the issue raised. This may include reporting the matter to the Committee through a published written update, requesting further information, or, where necessary, deferring or withdrawing the application from consideration to enable the matter to be properly assessed.

Determination of Planning Applications

32. Once all registered speakers have addressed the committee and the planning officer has presented the report, Councillors will debate the Officer recommendation and may ask for clarification from Officers. However, if there are issues which require factual clarification, normally these should be directed to the relevant case officer before the Committee meeting, not at the meeting itself which will result in more

efficient use of the Planning Committee's time. After Councillors have debated the application, the Chair will call for a vote and the Committee Chairperson has a casting vote.

33. A Councillor who is not present for the entirety of the Officer presentation, public speaking and Committee debate on an application must not participate in the debate or vote on that application. This is to ensure that all Councillors taking part in the decision have heard the same information, arguments and advice.

34. Whilst Officers will provide professional advice and a recommendation on every application, it is the responsibility of members of the planning committee, acting in the interests of the whole Borough, and in accordance with planning law, to exercise their planning judgment to decide what weight to attach to the advice given and to the considerations of each individual application, provided that decision is rational and based on planning grounds.

35. The first vote will be on whether to accept the officer's recommendation. Councillors must weigh all material considerations and may vote for or against the Officer recommendation. If the Officer recommendation is carried, the decision has been made and the committee can move on to the next item of business. If the Officer recommendation is not carried, members must then propose an alternative motion. This may be:

- To grant planning permission (with appropriate conditions);
- To refuse planning permission (with appropriate reasons);
- To defer the application to a later meeting for further information or clarification.

Any motion, including any proposed conditions, amendments to conditions, deferrals, or reasons for refusal, must be formally moved and seconded before being debated and finally voted upon.

36. Councillors may add, amend or remove conditions or reasons for refusal but they cannot alter the substance of the application itself (for example, by allowing a single dwelling if the application is for 2 dwellings). Councillors should seek guidance from the relevant Officer as to the appropriateness of the proposed change. Conditions must meet the legal tests set out in national policy and case law: they must be:

- necessary,
- relevant to planning,
- relevant to the development,
- enforceable,
- precise, and
- reasonable.

Applicants have a statutory right of appeal to the Planning Inspectorate against any refusal or condition.

37. Councillors may wish to apply different weight to certain issues and reach a decision which is contrary to the Officer recommendation. In this instance, if the Officer recommendation is not carried when voted upon or if the officer recommendation has been moved but fails to be seconded, this does not mean that the decision contrary to Officer recommendation has been approved. It means that the application remains undetermined. In this case a separate motion must be moved, seconded and voted upon. If, in moving such a motion Councillors require advice about the details of the motion, the meeting can be adjourned for a short time to allow members and Officers to draft the motion, which will include reasons for the decision which are relevant to the planning considerations on the application, and which are capable of being supported and substantiated should an appeal be lodged. Councillors may move that the vote be recorded and, in the event of a refusal of planning permission, record the names of Councillors who would be willing to appear if the refusal was the subject of an appeal.

38. Members must state clear reasons for any decision which is contrary to the officer recommendation, including identifying relevant policies. Pressure should never be put on Officers to identify appropriate planning reasons.

39. Where Councillors are minded to make a decision which is contrary to officer advice, the meeting may be adjourned to allow officers to advise members on matters such as the legal implications, appropriate conditions, drafting of reasons for refusal, or to provide planning policy advice for example.

40. Where Councillors resolve to refuse permission contrary to officer recommendation, the planning reasons for refusal must be identified and agreed by the Committee. The reasons will be recorded in the minutes and must be based on material planning considerations and the relevant policies to support the refusal. The detailed wording of those reasons may be delegated to the Assistant Director of Development in consultation with the Chair. Clear, evidenced reasons reduce the risk of costs being awarded against the Council should an appeal be allowed.