



<b>REPORT OF:</b>	HEAD OF PLACES AND PLANNING
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<b>TO:</b>	PLANNING COMMITTEE
<b>DATE:</b>	26 JULY 2017

<b>Agenda item: 11</b>	<b>Ward: n/a</b>
<b>SUBJECT:</b>	<b>REVIEW OF PLANNING PROTOCOL</b>
<b>RECOMMENDATIONS:</b> (1) <b>Agree the Planning Protocol and its annexes as attached.</b> (2) <b>Publish the Planning Protocol on the Council's website.</b>	
<b>REASONS FOR RECOMMENDATION</b> To approve the reviewed Protocol before publication onto the Council's website.	

**Planning Committee has authority to approve the above recommendation.**

## 1. SUMMARY

- 1.1 At its meeting on 14 June 2017 the Committee received a report on the review undertaken of the Protocol and proposing that it should be regularly reviewed.
- 1.2 At that meeting Members suggested minor amendments to the reviewed Protocol, including:
  - clarification of the definition of a member interest in an application and the circumstances in which it should be referred to committee; and
  - asking for an application, which would normally be delegated to officers for determination, to be referred up to committee.
- 1.3 At its subsequent meeting, on 5 July, the Chairman also invited views on restricting the right to request reasons for refusal to members of the Planning Committee or nominated substitutes whose substitution at a meeting had been formally notified to officers. The Committee indicated its broad support for this proposal being included within the Protocol.
- 1.4 The Protocol has now been updated to take note of the amendments proposed and is being brought back to the Committee for formal agreement.

## 2. **IMPLICATIONS**

### **Financial**

- 2.1 Planning decisions made unreasonably can lead to significant costs being incurred by the Council through an award of costs by a Planning Inspector, as well as the time and cost implications of defending appeals, especially where legal representation is required. The revised protocol is aimed at ensuring decisions are robust so that such risks are reduced.

### **Legal**

- 2.2 The Council is under a general duty to act fairly, and the right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The right to a fair hearing is also guaranteed by Article 6(1) of the European Convention on Human Rights

### **Equality Impact Assessment**

- 2.3 The Protocol takes account of the interests of both applicants and objectors and provides equal opportunities to both in its application.

## 3. **CONSULTATION**

- 3.1 The recommendations are put forward as a result of the review of the Development Management Review Group, undertaken during 2016-17, and comments made by the Planning Committee at its meetings on 14 June and 5 July 2017.

### **Background papers:**

Previous Planning Committee Protocol

# Planning Committee

## Planning Protocol

### 1. INTRODUCTION

- 1.1 The purpose of the protocol is to explain the role of members within the development management process and, more specifically, the consideration of planning applications.
- 1.2. Planning applications can often have a significant impact on other residents and members have an important role to play in the determination process, both in representing local views and acting as community leaders when called upon to take decisions.

### 2. DETERMINATION OF PLANNING APPLICATIONS

- 2.1 The majority of planning applications are minor and relate to household applications, for example extensions or small conversions.
- 2.2 This type of application is delegated to the Head of Service responsible for development management to determine because:
  - it allows them to be dealt with efficiently and speedily;
  - it helps the Council to meet the statutory deadlines for determining applications;
  - they are straightforward to determine within the planning policy framework; and
  - professional planning officers are fully qualified and competent to deal with them.
- 2.3 The principal role of the Planning Committee is therefore to decide major planning applications, such as those for new developments, which have an impact upon the wider community or affect a greater number of residents.
- 2.4 All applications relating to a Council-owned site will be referred to the Planning Committee in the interests of transparency.
- 2.5 Any application being made by an officer, a councillor, or close family member such as spouse, partner, brother, sister, parent, grandparent, or child shall be referred to the Planning Committee, as well as any application in which an officer or a member has a personal or prejudicial interest.
- 2.6 Members may also refer any application to the Planning Committee subject to the following considerations.

### **3. REFERRAL OF AN APPLICATION TO PLANNING COMMITTEE**

- 3.1 Any councillor, irrespective of whether they are a member of the Planning Committee, may ask for a planning application to be referred to the Planning Committee, as long as they do so within 21 days of the application being publically notified. Members may request automatic notification of applications within their ward by contacting [planning@reigate-banstead.gov.uk](mailto:planning@reigate-banstead.gov.uk)
- 3.2 The decision on whether or not to refer an application will be taken by the Chairman of the Planning Committee, in consultation with the Development Manager.
- 3.3 A request from a councillor to refer an application to committee should be by exception and only when justified by a significant degree of public interest in the application beyond that of immediate neighbours.
- 3.4 In all cases, the application must have been the subject of discussion at the relevant Area Forum, and the member requesting a referral to committee must have given valid reasons for doing so based upon relevant planning considerations.

### **4. PRE APPLICATION DISCUSSION and FORUM MEETINGS**

- 4.1 Member involvement in all applications is welcome, in order to give officers a steer and insight into any local concerns or considerations.
- 4.2 For minor applications, in particular where the objection or concern is only being raised by an immediate neighbour, councillors are encouraged to contact the planning case officer, either by telephone or email.
- 4.3 In some cases, however, where the concerns are more widespread, it is recommended that the application should be debated at the area planning forum meeting.
- 4.4 The development forums are not open to the public. They are an opportunity for early discussions to take place between members and officers and can lead to amendments being suggested to applicants, or to changes being made to an officer's preliminary recommendations. Forum discussions should not therefore be disclosed publicly at the Planning Committee.
- 4.5 At all times, Member-officer discussion should take place at the earliest opportunity, with openness and respect for each other's roles, responsibilities and opinions.
- 4.6 It is the duty of officers to give impartial planning advice at all times and to make recommendations based upon relevant planning considerations only.

## 5. PLANNING COMMITTEE MEETINGS

- 5.1. All members and substitutes must attend an annual training session at the start of each municipal year before sitting on the Planning Committee.
- 5.2. Development Management is likened to a quasi-judicial process and Planning Committee members must not commit themselves by indicating that they intend to either refuse or approve an application until all relevant evidence has been presented to the Committee and debated.
- 5.3. A ward member on the Planning Committee has a duty to represent local interest and may put forward representations on behalf of their residents, both for and against an application.
- 5.4. They must, however, ensure that they also have regard to the bigger picture, and the interests of the community as a whole, in formulating their own views and deciding how to vote.
- 5.5. It is not unreasonable for Planning Committee members to form an initial view on an application before debating it at committee as long as they keep an open mind and consider other points of view before reaching a final view and voting upon it.
- 5.6. When commenting upon, or voting on an application, members should only take into account the relevant planning policy and considerations (both local and national).

## 6. MEMBER PROCEDURE NOTES

- 6.1 The following procedure notes are annexed to the Protocol for information.
  - **Procedure Note 1:** Arrangements for public speaking.
  - **Procedure Note 2:** Requesting site inspections.
  - **Procedure Note 3:** Moving reasons for refusal at a meeting.



## **1. General**

- 1.1 Formal site inspections, which all committee members need to attend, are the exception rather than the rule.
- 1.2 In most cases, the detail given in the committee report and site layout plans, and the fact that members can always make their own informal inspection if a site or location is unfamiliar to them, are sufficient to take an informed decision.

## **2. Formal site inspections**

- 2.1 There are two main instances when a formal site inspection can be required:

### *2.1.1 to assess local character*

These inspections do not need to be accompanied and can be made at any time by members individually.

### *2.1.2 to view something of significance that can only be appreciated from within the site or an adjacent private property.*

These inspections have to be accompanied by a planning officer and a set date and time is therefore scheduled.

The normal practice is to schedule all inspections for applications going to the same meeting on the same date.

- 2.2 When a formal site inspection is required, all Members of the Planning Committee are expected to visit the site, including any Substitutes who have been asked to sit on the committee when the applications are to be determined.
- 2.3 This is because, if the subsequent decision is to refuse permission the applicant may appeal, in which case the committee will need to demonstrate that they have taken everything relevant into consideration at any subsequent hearing.
- 2.4 If a Member, or Substitute appointed to replace a Member, is unable to attend an accompanied site inspection, apologies should be sent to the Chairman of the Planning Committee who will maintain a record of attendance.

## **3. Requesting a site inspection**

- 3.1 Any councillor may make a request for a formal site inspection, regardless of whether or not they are a Member of the Planning Committee.

- 3.2 All requests must be made to [planning@reigate-banstead.gov.uk](mailto:planning@reigate-banstead.gov.uk) within 21 days of receiving notification of an application.
- 3.3 Before this, and as early as possible in the process, members should raise their concerns about an application with the case officer so that these can be taken into consideration when writing the report and making recommendations.
- 3.4 The need or otherwise for a site inspection should also form part of the debate at the informal planning forum meetings, held between officers and members to consider the list of applications notified.

#### **4. Approval of requests**

- 4.1 The decision on whether or not to make a formal site inspection will be made by the Development Manager, in consultation with the Chairman of the Planning Committee.
- 4.2 The Development Manager will also decide whether or not the inspection needs to be accompanied.

#### **5. Notification of site inspections and timing**

- 5.1 Democratic services are responsible for notifying members about site inspections by email, as soon as dates have been confirmed.
- 5.2 During the winter months (GMT) accompanied visits will be scheduled for the morning of the Saturday before the meeting date, unless otherwise agreed in consultation with the chairman.
- 5.3 During the summer months (BST), accompanied visits will be scheduled for the evening of the Monday before the meeting date, unless otherwise agreed in consultation with the chairman.

#### **6. Behaviour at site inspections**

- 6.1 Site inspections are an opportunity for committee members to familiarise themselves with a site and to ask relevant questions of the accompanying planning officer.
- 6.2 They are not an opportunity for lobbying and there should be no discussion on the relative merits of an application, or about how a member is intending to vote.
- 6.3 Only Planning Committee Members and Substitutes are invited to attend accompanied site inspections and it should not be treated by either local residents or ward members as an opportunity to put individual views to the Planning Committee.



## INTRODUCTION

1. All councillors are encouraged to play an active role in the determination of planning applications, right from an early stage in the process.
2. The best way they can do this is by attending the planning forum meetings so that their views, and particularly any concerns, can be taken into account by the case officer before the report and formal recommendation is drafted. However, given the private and informal nature of forum meetings, reference to them or reliance on views expressed at them should be avoided during the Committee debate
3. This gives officers an opportunity to discuss possible amendments with an applicant, or to apply conditions which can address specific concerns.
4. Site inspections may also be agreed, particularly when the main concern is about visual amenity. All committee members are expected to attend scheduled site inspections so that they can then make a fully informed decision.
5. Notwithstanding the opportunities for councillors to be involved in the debate from an early stage, it does not necessarily follow that their views will be the same as those of officers.
6. Planning officers must make professional recommendations based upon both national and local planning policy, and cannot take account of any objections which are not based on sound planning grounds.
7. Although Members must also take decisions based on sound planning grounds this does not mean that they cannot reach a different view from the officer recommendation, particularly when the conclusion is a 'balanced one' which has arguments both for and against and where there may be strong local views which a ward member is keen to represent.
8. Any member having concerns about an application should therefore discuss these with the case officer as early as possible in the process to see if they can be resolved.
9. If this does not prove to be the case and the concerns remain after publication of the agenda the following actions should be taken with a view to preparing potential reasons for refusal.

### Requesting reasons for refusal

10. A formal request for reasons for refusal to be drafted must be made to [planning@reigate-banstead.gov.uk](mailto:planning@reigate-banstead.gov.uk) **no later than noon on the Friday** preceding the Wednesday meeting. The request must be clear in identifying the nature of the harm caused.
11. Where the DM is of the view that the member's concerns are reasonable and based on planning grounds that could be supported at any eventual appeal, officers will assist the member in drafting reasons for refusal which the member may then raise during the debate at the Planning Committee.
12. Where the DM is of the view that there are no valid planning grounds on which to refuse an application, he will advise the member of this and it will then be up to the member to draft their own reasons for refusal if they wish to raise these at a meeting.

13. Only a member of the Planning Committee, or a nominated substitute whose membership on the committee when the item is to be considered has been formally notified to the Democratic Services Officer by the member sending apologies, may request reasons for refusal.
14. The Chairman of the Planning Committee has the discretion to allow visiting members to speak either for or against an application at a meeting.
15. Any councillor having asked for reasons for refusal should outline their concerns early in the debate but should then listen carefully to all other views and (only if a member of the Planning Committee) await the end of the debate before determining whether their concerns have been addressed and whether or not they wish to move formal reasons for refusal.

### **Moving reasons for refusal**

16. Only a Member of the Planning Committee, or a Substitute acting as a Member at a meeting, may move a formal motion asking for a vote on reasons for refusal.
17. In doing so, the Committee Member should read out the reasons for refusal in full following which the Chairman will ask if there is a seconder.
18. If there is no seconder the motion will have failed and the Committee will move on to vote upon the recommendation set out in the report.
19. If the motion is seconded **a vote will be taken** and, if a majority support the motion to reject the recommendation:

*(a) in the case of an original recommendation for permission to be granted:*

the recommendation will be overturned and reasons for refusal will be resolved and recorded; and

*(b) in the case of an original recommendation for permission to be refused:*

the application will be deferred for further consideration and to allow officers an opportunity to recommend planning conditions to be added to any eventual grant of planning permission.

20. If reasons for refusal fail upon a vote, the Committee will move on to vote on the original recommendation, subject to any amendments previously discussed and agreed during the debate.
21. If reasons for refusal are upheld, and an application refused, the Member requesting the reasons for refusal will be expected to support their position at any subsequent appeal.

### **Applications rejected on a vote without a motion to move reasons for refusal**

22. There may occasionally be instances where a majority of members vote against an application without anyone having requested reasons for refusal in advance. This is usually as an outcome of the debate and discussion, where members have listened to the views of others before formalising their own views.
23. In these circumstances, the Chairman will recommend that the application “be deferred to a future meeting to allow officers to prepare a further report” which may clarify the concerns raised or offer an alternative recommendation as appropriate.

**1. Chairman's Discretion**

- 1.1 Public speaking operates at the discretion of the Chairman, with the approval of the Planning Committee.
- 1.2 The Chairman retains the discretion to vary the procedures as long as there is equity and proportionality between objectors and supporters.
- 1.3 Subject to the above, the following rules will be applied in all normal circumstances:

**2. Applications recommended for approval:**

- 2.1 Members of the public may register to speak against an application if they have made written representations.
- 2.2 In these circumstances the applicant (or the applicant's agent) and any other person who has made written representations in support will have the right of response.
- 2.3 The applicant (or the applicant's agent) or any other person in support may not speak unless an objector has registered the intention to speak.

**3. Applications recommended for refusal:**

- 3.1 The applicant (or the applicant's agent), and any other person having made written representations in support, may register to speak if an application is recommended for refusal.
- 3.2 In these circumstances, anyone having made written representations against the application will have the right of response.
- 3.3 Objectors may not speak unless the applicant, the applicant's agent or any other person having made written representations in support, has registered an intention to speak.

**4. In all cases where public speaking is allowed:**

- 4.1 A maximum of two speakers in favour and two speakers against will be permitted for an application open to public speaking, subject to a maximum speaking time of three minutes per speaker.
- 4.2 A member of a parish or town council making representations, either for or against an application, will be given preference within the permitted allocation, if the maximum number of people registering to speak is exceeded.
- 4.3 Residents Associations will have no preferential right to speak, either for or against an application.

**5. General**

- 5.1 Public speaking will only normally be allowed once on an application. If an application is deferred and brought back to the Committee the opportunity for further public speaking will be at the Chairman's discretion.
- 5.2 Public speaking will operate after the officer's introductory presentation of the application and before the debate is opened to Members.
- 5.3 Agenda for meetings are published five days in advance of the meeting date. The onus is on interested parties to check whether an application is going to committee and to register to speak.
- 5.4 The deadline for applying to speak is 5 pm on the Monday before the date of the Committee.
- 5.5 Speakers will be registered on a first-come, first-served basis, with the exception of parish or town councils (who take preference).
- 5.6 Contact details for confirmed speakers will be given to anyone else eligible to speak who applied before the deadline. This is to allow the speakers an opportunity to take into account representations that other people wish to raise.