

## **GUIDANCE NOTE ON GENERAL PROCEDURES AT PLANNING AND HIGHWAYS COMMITTEE MEETINGS**

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## **Introduction**

This Guidance is for Planning and Highways Committee Members attending Committees and is intended to supplement the Corporate Councillor Code of Conduct (the Code of Conduct) and any Code of Conduct for Council Members and Officers in Relation to Planning Matters issued from time to time by the City Council with regard to the operation of Committees and the determination of Planning matters.

This Guidance is not binding upon Members but sets out examples of both best practice and inappropriate conduct to aid in the interpretation of the above Codes and it is in the best interests of the City Council, the Committees and individual Members to follow this guidance, as compliance or non-compliance with this Guidance may be a material consideration in any subsequent investigation of a complaint as to Member's conduct. This Guidance Note is on general procedures for Committees and specific guidance on particular matters such as Telecommunications will be issued from time to time by the legal contact officers for Members.

The aim of this Guidance is to reduce the number of situations where things said or done by Members attending the Committees are misconstrued resulting in damage to the Council's reputation and loss of confidence in the planning system, unnecessary legal challenges, planning appeals and awards of costs against the City Council

This Guidance may be amended at any time to accommodate changes in the law, procedure and best practice and revised copies will be circulated to all Members prior to the next meeting of the relevant Committee.

### **1. Members' Training**

Members are reminded that determining matters under the Town and Country Planning Act 1990 and related legislation at a Committee requires a degree of knowledge and familiarity of planning law and procedure on their part. Member training is offered as a prerequisite to all new Members to Committees and regular updates and training for existing Members is offered by Planning Officers as is required due to legislative or policy change.

No Member may be appointed to serve on a Planning and Highways Committee until they have received the necessary training. This is to ensure that correct procedures are followed and proper planning considerations are employed in decision making. The integrity of the planning system and the need for public confidence require this.

## 2. **Chair’s Briefing Meetings**

Chair’s Briefing Meetings will be held with Officers and will deal with circumstances such as the late submission of relevant information and of procedural issues concerning the conduct of the Committee hearing.

### 2.1 Planning and Highways Committee Briefing Meetings

2.1.1 The role of any Briefing Meeting which is held is to allow developers to present large-scale development proposals to the Committee early in the planning process, and wherever possible at the pre-application stage, so that the developers will benefit from early feedback on any concerns that the Committee Members may have about the proposal. This gives the developer the opportunity to amend their proposals if they wish and avoids the possibility that the Committee’s eventual decision on the application might come as a surprise to the developer. Planning Committee Members are required to attend any Briefings to ensure that developers get any feedback necessary.

2.2 Such meetings are not to be used for discussion of the merits of any proposal.

## 3. **The Public Nature of Committee Meetings**

3.1 All Committees are public meetings of a committee of the City Council and it is a legal requirement that the public and the press are admitted to all such meetings.

3.2 The issue of transparency of proceedings is especially important in planning matters where a controversial application determined by an officer under a delegated power or in a closed session may lead to unfounded allegations of bias which can only be removed by having the matter determined in public. A controversial application in this context may mean a matter which is relatively simple to determine in terms of planning policy, but which may encounter significant public opposition due to the nature and proximity of the anticipated use e.g. a major metropolitan landfill site 250 metres from a small town.

3.3 In addition Planning Authorities are expected to consider the views of local residents in determining planning applications, with the failure to do so resulting in a potential award of costs at a subsequent planning appeal. Excluding the press and public could therefore be used against the City Council to make a claim for such costs.

3.4 The Committee is a Regulatory Body for the purposes of the Council Procedure Rules in that it discharges on behalf of the City Council those planning and highways regulation duties imposed by statute. This means that the cap as to length of meeting under Clause 5.12 of the Council Procedure Rules in Part 4 of the Constitution does not apply to meetings of the Committee so as to allow full access to the public to all items on the Agenda of the Committee without premature termination of the public right to make representations caused by overrunning.

#### 4. **The Submission of Late and/or Confidential Information**

4.1 Sometimes information is submitted to a Member by an objector or other third party which if it were received in time would normally be incorporated into a report on an agenda, or supplementary agenda, but for one reason or another has been received too late for this to occur. This information may be in the form of a written submission or a set of photographs or some other audio-visual aid, submitted just before the Committee Meeting directly to Members by persons supporting or objecting to a particular item on the Agenda and without notice to the Officers.

4.2 If such late information is submitted directly to a Member, the Member should pass on this information as soon as possible to the Planning Officer (or the Committee Secretary if the meeting is about to commence) to determine the best course of action given the amount of information received and the stage of the proceedings, as well as when this information first became available for submission. Depending upon these factors this may mean that the particular item in question has to be deferred until the next meeting of the Committee. This should only occur in the most extreme circumstances when determination on the date of the current Committee is impossible.

4.3 The deliberate late submission of information on a contentious item should not be used as an excuse for a deferral of that item to the next Committee. Members should therefore consider very carefully any circumstances where a party has had access to information relevant to the determination of an item but has withheld submitting this information until after the publication of the Agenda. In such circumstances it may be advisable to put such an item to the end of the Agenda and/or allow a short adjournment for officers to assess the late information and make a verbal report back to the Committee. This would prevent undue delay arising in the determination of contentious issues which might lead to unnecessary planning appeals.

- 4.4 Sometimes a person will attempt to supply information to a Member which is claimed to be confidential in nature. Members should remember that they have a general duty of confidentiality under paragraph 4 of the Code of Conduct, and any action taken by the Member concerning the use of such confidential information should be in accordance with that duty.
- 4.5 The principle of transparency in the planning process will generally find against any relevant information to the planning process being withheld from public scrutiny, restricting any right of confidentiality which may be sought by the person providing the information. In such circumstances the Member will normally be required to ask the person supplying the confidential information to decide between openly providing this information or of withdrawing this information from consideration whatsoever, so as to comply with both the duty under paragraph 4 of the Code of Conduct, and the public principle of transparency.
- 4.6 Only where the City Council have been advised by the appropriate authorities that there is a legitimate and well founded threat to life or property from the publication of such information, would a right of confidentiality be ever considered to exist sufficient to overcome the principle of transparency. Mere commercial or personal interests on their own will never justify the breach of the principle of transparency.

## **5. The Submission of Defamatory and Offensive Information**

- 5.1 Overtly defamatory or offensive remarks in a representation will not be accepted, even if legitimate planning issues are also raised. Its publication would not only bring the planning process into dispute but may also render the Council liable in damages if malice can be proved. Correspondents will be informed that they will need to be resubmitted with such comments removed.
- 5.2 There may be instances where an unsubstantiated allegation may contain information material to the determination of a course of enforcement action or a planning application. A developer or landowner may regard the allegations as defamatory, but if they cannot be safely ignored and are material to the delegated or Committee decision to be made, their consideration will be justified.

## **6. Unreasonable Conduct in Decision Making**

- 6.1 Members must be aware that making a decision based on grounds not related to planning issues will be considered to be unreasonable conduct by both Planning Inspectors and the High Court, resulting in
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this decision causing an award of costs against the City Council at a planning or enforcement appeal and/or the decision being quashed on judicial review with an award of costs against the City Council.

- 6.2 All planning authorities have the discretion not to adopt the professional or technical advice of its Planning Officers, so that a decision against the advice of the Planning Officer will not automatically be considered to be unreasonable conduct.
- 6.3 Members will sometimes face considerable public support for or against a particular item on the Agenda of the meeting. Whilst the views of local residents have to be taken into account when determining a planning application, if those views are not relevant to a planning issue it is unreasonable conduct for Members to take them into account when making a decision. Planning Officers seek to identify planning and non-planning issues raised as part of the consultation process and decisions as an aid to Members in this regard.
- 6.4 Decisions which ignore Local or National Policy Guidance will generally be deemed to be unreasonable and may result in costs being awarded to the appellant. Decisions which seek to evade National or Local Policy Guidance by adopting grounds for refusal which are in line with that policy but which are clearly not applicable to the circumstances of the particular application will also generally be deemed to be unreasonable and may result in costs. Again Planning Officers will refer to relevant National and Local policy guidance in their reports as an aid to Members in this regard.
- 6.5 Disagreement with the Planning Officers will normally be reasonable where it involves Members giving different weight to certain material planning considerations, based on careful consideration of the advice given by planning officers and of the supporting evidence. Planning decisions often involve weighing up conflicting considerations leading to a balanced judgement and reports to the Planning Committee will indicate where there is conflicting evidence or where a recommendation is finely balanced. Genuine differences of opinion between the Planning Officer and the Members on such issues can therefore exist without either bringing the planning system into disrepute or risking an award of costs.
- 6.6 Members should also be aware that when authorising enforcement proceedings that unreasonable decisions will put the Council at financial risk. A Stop Notice can create substantial costs for a developer or landowner and the Council is only protected from a substantial compensation claim if the development being stopped is

unlawful. Any Enforcement Notice that requires the owner/occupier to do more than is required may not only result in an award of costs but may also result in a substantial claim for compensation should the accompanying Enforcement Notice be dismissed on appeal. The Planning Officers report will provide guidance for Members as to what is reasonable in the circumstances of the case on these points.

## **7. Maintaining Public Confidence in the Committees**

- 7.1 Public confidence in the local operation of the planning system can be undermined by Members making unreasonable decisions (as set out in paragraph 6 above), as this may result in an increase in the number of appeals which the City Council lose. Success on these appeals may encourage disappointed applicants to make appeals for all applications in the hope that an Inspector will be more likely to grant planning permission than the Committee. In such a situation the City Council would have an increasing amount of Officer time and resources spent on matters not suitable for appeal in the first place.
- 7.2 Members should be especially careful when dealing with the media in respect of matters pertaining to the Committee, as adversely reported comments may also result in a loss in public confidence.
- 7.3 Members should note that conduct undermining confidence in the planning system may also constitute conduct bringing the authority into disrepute under paragraph 5 of the Code of Conduct.

## **8. Maintaining Public Confidence in the Role of Planning Officers**

- 8.1 Members should at all times during meetings of Committees maintain a professional relationship with Planning Officers, sticking strictly to the Items contained within the Agenda and to the order of business as set out in the Agenda, rather than seek to raise matters with the Planning Officer not on the Agenda which may be misconstrued by those present.
- 8.2 Members should be careful as regards individual approaches to Planning Officers immediately before or after Committees. If the approach is in relation to an item on the Agenda, this may be misconstrued as an attempt by other persons present to influence the Planning Officer's professional and impartial advice and give rise to the appearance of a personal or Disclosable Pecuniary Interest existing where no such interest exists. All matters pertaining to an item on the Agenda, including questions to the Planning Officer should be dealt with under the normal order of business in open meeting.

- 8.3 Members who would be barred from an item on the Agenda of a particular Committee due to having a Disclosable Pecuniary Interest should take special care when making any approach to the Planning Officer. If these approaches are immediately prior to or immediately after the Committee meeting, or that particular Agenda Item, then this may be misconstrued as an attempt to unduly influence the Committee through the Planning Officer, even if the approach is unrelated to anything on the Agenda.
- 8.4 Members can legitimately question the views of Planning Officers in a robust manner and openly express disagreement with their professional views. This can lead to a better understanding of the issues involved by all persons present, to the benefit of the planning system.
- 8.5 Members should however seek to avoid an unduly adversarial, repetitive or demeaning style of questioning, as this may reflect badly upon both the Planning Officer and the Member to the detriment of public confidence in the operation of the planning system. It is important that the professional standing and credibility of Planning Officers and the objectivity and efficacy of Committee Members is maintained in order that the public has confidence in the Council's planning system and is not unduly sceptical in its operation.
- 8.6 Members are further referred to the Protocol for Member/Officer Relations at Part 5 on the Constitution which deals with the general obligations between Members and Officers.

## **9. Allegations of Misconduct of Officers**

- 9.1 Members should be reminded that Planning Officers and other Officers will often work with the professionals acting on behalf of a developer to improve a poor or marginal scheme through a series of negotiations over often quite lengthy periods of time. This is part of the duties of Planning Officers and does not of itself imply that there has been improper collusion between the Planning Officer and the Developer, or that the Developer has exercised undue influence over the Planning process.
- 9.2 If a Member reasonably believes that improper collusion exists, or that undue influence is being exercised by a Developer in respect of a Planning Officer then this allegation should be notified to the Monitoring Officer before the meeting of the Committee. The Monitoring Officer will then inform the Chief Planning Officer, Director and/or Executive Director and take action with regard to informing external investigators



such as the South Yorkshire Police. The Member should thereafter provide whatever evidence or assistance may be required in the proper investigation of this matter by the City Council and/or the Police.

- 9.3 In the event of an allegation of improper collusion or undue influence being raised prior to the Committee meeting, the planning case file and Report will be reviewed by a Planning Officer senior to the Planning Officer preparing the report and previously unconnected to the application and any amendments to the Report will be presented by that senior Planning Officer.
- 9.4 In no circumstances should a Member seek to make an allegation of improper collusion or undue influence in the course of the Committee meeting itself. Aside from disrupting the proper conduct of the meeting and bringing the planning system into disrepute, this would prejudice the proper investigation of the allegation and personally leave the Member open to investigation for misconduct and an action for slander by the Developer and his agents, as well as the Planning Officer, should the allegation not be substantiated. A Member should therefore also not seek to defer a determination following an allegation of misconduct made by a member of the public.
- 9.5 Members need to be aware that conduct which falls outside these guidelines can be the subject of an application for judicial review on the ground that the Committee failed to deal with the particular application in a proper manner: it does not matter that the decision may have been correct in planning terms. It could also justify an application for costs in a planning appeal. Allegations of bias and/or improper collusion could potentially also be the subject of an action for slander; statements of that nature only attract qualified privilege which can be withdrawn if malice is proved.

## 10 **Commencement of Committee Meeting**

- 10.1 Prior to the start of the meeting, the Committee Secretary will have found out which members of the public wish to speak on which items on the agenda. The order of the agenda should therefore be revised in consultation with the Chair, to move those items up the agenda which have the most interest to those members of the public present so as to allow it to be dealt with first and to avoid disruption of the meeting.
- 10.2 The Committee Secretary will then announce the revised order of business and will explain, for the benefit of the public, the procedure for addressing the Committee. The Committee Secretary will also announce, after consultation with the Planning Officer, if any

application is now not to be considered at the current meeting or has been completely withdrawn by the applicant.

- 10.3 In respect of applications which are now to be considered at the next Committee Meeting, any members of the public present who attended the meeting of the Committee to speak to that application should be offered the chance to either speak to that application with their comments incorporated into the revised report for that application, or to return to the next meeting of the Committee when the item would normally return for consideration. The preferred option would be for members of the public to attend to speak to that application at the next Committee meeting.
- 10.4 To speed up the proceedings, it will be assumed that Members will have read the reports on the agenda. Presentations will however be invited where they help to focus the Committee on the material considerations, where there are supplementary reports or to help the public understand why decisions are being made.
- 10.5 Members leaving the room during consideration of an item can not thereafter take part in the decision on that item upon their return, as they cannot be seen to have been in full possession of the information required to make that determination, and may have been influenced by events occurring outside the Committee during their absence.

## **11 Meeting Procedure and Decision Making**

- 11.1 Members are reminded of the procedure for considering each application as follows:-
- Planning Officer Introduction to report, where appropriate (see paragraph 10.4 above).
  - Public representations – speaker(s) against recommendation first; speaker(s) for recommendation second.
  - Planning Officer response to public representations.
  - Member report back on any site visit held.
  - Member questions.
  - Planning Officer responses.
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- Member comments.
  - Voting on Planning Officer recommendations (with any amendments/ suggested changes/ additional conditions, etc.) as per Council Procedure Rules.
  - Give reasons for grant or refusal of application.
  - When granting a planning application, to indicate whether or not it should be required that any amendments to the application which need planning permission which are subsequently submitted by the applicant to be reported to the Committee for a decision.
- 11.2 Members may ask for the vote to be recorded, as normally no record is taken of the numbers for or against on a particular determination, only whether or not the matter was agreed or refused by the Committee. Council Procedure Rule 18.6 sets out in full the proper procedure for a formal recorded vote.
- 11.3 Separate guidance in the form of a Guidance Note to Chairs on Disruption of Committee Meetings by Members of the Public exists in relation to the disruption of Committee Meetings by members of the public, which includes the intimidation of Members.
- 12. Requests for Site Visits**
- 12.1 Wherever possible, Planning Officers and the Chair of the Committee will try and anticipate where a site visit might be required and organise it in advance of the Committee, to avoid unnecessary delay. A clear case should be presented by any Member suggesting an additional site visit and consideration given to any advice from Officers present about available information that might negate the need for a visit. Paragraph 6 of the Code of Conduct in Relation to Planning Matters contains specific rules regarding this issue.
- 12.2 When the Planning Officer suggests a decision on an application be deferred pending a site visit and a member of the public is present at that meeting and may be unable to attend the following meeting, then he/she should be allowed to speak and a note of such representations will be made and taken into account when that application is considered.
- 12.3 Members are reminded that the Code of Conduct in Relation to Planning Matters at paragraphs 6 and 7 regulates Members' conduct
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with regard to both formal Committee Site Visits and individual site visits.

- 12.4 Attendance at a formal Committee Site Visit is not mandatory for Members voting on the subsequent item on the Agenda, but Members are expected to attend if they feel that they could not make a decision without a site visit in any particular case or to ensure that sufficient Members attend to maintain public confidence in the need for the visit. If a Member cannot for whatever reason attend upon the formal Committee Site Visit and feel that they need to visit the application site before making their decision, they should undertake an individual site visit prior to the Committee, or abstain from the decision at the Committee.

### 13. **Calling for a Public Inquiry**

- 13.1 When an application is refused, and is likely to be the subject of an appeal, there is sometimes pressure at a Committee from objectors and other members of the public present for a public inquiry to be held in respect of any potential appeal, as it is erroneously believed that the City Council have the power to hold such an inquiry, and that a public inquiry will be more likely to be swayed by the representations of the objectors.

- 13.2 The Planning Inspectorate determine which of the three types of appeal is the most appropriate for any particular appeal. The three types of appeal are:-

- Written representations;
- Informal hearing;
- Public inquiry.

An appeal will be written representations if both the appellant and the Council agree to it. These appeals are undertaken purely on the basis of documents submitted by the parties and are the cheapest and quickest form of appeal.

- 13.3 If there is no agreement as to written representations being the most appropriate form of appeal then the appeal will be either an informal hearing or a public inquiry at the sole decision of the Planning Inspectorate. Both parties may make representations regarding which is the more appropriate method of appeal, but the decision is solely that of the Planning Inspectorate.

13.4 In practical terms there is very little difference between an informal hearing and a public inquiry for an objector as both are held in public and both allow for objectors to make representations. The only real difference is that the public inquiry allows for evidence to be given under oath. All three types of appeal will deal with exactly the same material planning considerations. An appeal is as likely to be upheld on its planning merits after written representations as it would at an informal hearing or a public inquiry.

#### 14. **Declarations of Interest**

14.1 Members should be clear about declaring an interest and when they should leave the room when the matter is discussed. Paragraph 9 and Appendix B of the Code of Conduct contain specific Rules regarding this issue. If in doubt, Members should seek advice from the Legal adviser prior to the start of the meeting. Whilst Officers will give advice, it should be noted that the decision itself rests with the Member.

#### 15. **Observers and Public Speaking at Committee Meetings**

15.1 The current practice of allowing only one spokesperson for each principal point of view is at the Chair's discretion. There are rules regarding this issue at paragraph 5 of the Code of Conduct in Relation to Planning Matters. Whilst the public do not have a right to speak, there will be times when additional speakers will wish to make representations. Sometimes denying a member of the public the chance to speak can create difficulties and Chairs are reminded to exercise this discretion having regard to the right to a fair hearing under Article 6.1 of the Human Rights Act 1998 and paragraph 5.2(c) of the Code of Conduct in Relation to Planning Matters.

15.2 Members are reminded that public speaking is normally limited to a maximum of 5 minutes (as opposed to 3 minutes at Council meetings). Paragraph 5.2(d)-(g) of the Code of Conduct in Relation to Planning Matters contains rules regarding this point. The Committee Secretary will keep a check of the time and inform the Chair when the 5 minutes is about to elapse. It would be helpful at that time if the Chair would advise the speaker to draw to a conclusion if it is not apparent that the speaker has nearly finished. A note of the public speakers and the key points made by them will be made by the Committee Secretary and retained on file with the agenda.

15.3 Any Councillor attending Committee meetings as an observer should take no part in the conduct of the meetings and should only contribute

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when specifically invited to do so by the Committee. The procedure for Councillors wishing to address the Committee is the same as for members of the public.

## 16. **Role of the Chair**

16.1 The Chair, in running the meeting, should be mindful of the need to retain a degree of independence as far as possible, and to be fair to all Members of the Committee. It is suggested that best practice be followed by the Chair in being the last speaker on an item of business, prior to the vote being taken.

16.2 If there are equal numbers of votes for and against a decision, the Chair will have a second or casting vote in accordance with Clause 18.2 of the Council Procedure Rules. There is no restriction on how the Chair chooses to exercise a casting vote.

16.3 The Chair is expected to maintain order and to allow the Committee to perform its proper functions without disruption by either Members of the Committee or by members of the public. The powers of the Chair in relation to dealing with disruption by Members of the Public are set out in a separate Guidance Note to the Chair on Disruption of Committee Meetings by Members of the Public. Committee Members should not seek to condone the behaviour of members of the public in acts of disruption, and should support the Chair in the proper exercise of those powers under the Council Procedure Rules.

16.4 Feedback from businesses and members of the public who have attended Committee meetings suggest that they can sometimes be confused as to why decisions have been made. The Chair has a role in ensuring that decisions are clearly explained, especially if against the officer recommendation in the report.

## 17. **After the Committee**

17.1 The determination by the Committee may not be the end of the planning process in respect of some applications. Where an applicant appeals, the process may continue for up to a year after the Committee meeting. Members should therefore be aware of outstanding appeals which are reported back on the Committee Agenda, and should avoid statements and conduct which might give the indication of unreasonable conduct in the making of the decision.

- 17.2 Whilst Members would be free to join and even organise lobby groups related to a particular application after the determination of a decision (subject to paragraph 17.1 above), Members should bear in mind that a duplicate application may be made by the applicant to the application refused which will require determination in the future. It may well be that Members may be forced to declare an interest and possibly be barred from taking part in this subsequent determination if their statements and conduct indicate that they could not approach this duplicate application with an open mind.
- 17.3 Members must bear in mind that Planning and Legal Officers are under a duty to pursue every such appeal against refusal with due diligence and rigour under their separate professional codes irrespective of their initial advice to the Committee. Committee Members should not therefore seek to influence the conduct of any subsequent appeal case by the City Council. Members should be aware that they are able to make representations at all types of appeal in their own name as an objector or supporter to the development, and to attend in person at both informal hearings and public inquiries to make those representations.
- 17.4 The decision of the Inspector will be reported back to the Committee at the first available opportunity. Members should not use this report back to comment adversely upon the Inspector's decision, or upon the conduct of the appeal, or the original application as this would undermine confidence in the planning system. In the overwhelming majority of planning appeals the Inspector will reach a decision substantially similar to the original report of the Planning Officer, dismissing the appeal against the decision of the Committee based upon that report.
- 17.5 In a minority of cases the Inspector may uphold the appeal despite the Planning Officer's report and the decision of the Committee. Whilst there is a right for Inspector's decisions to be reviewed that is by an application for judicial review in the High Court based on evidence that the decision was unreasonable in planning terms or followed a misinterpretation of law or planning policy; it is not a right of appeal.
- 17.6 There will also be a very small number of appeals which have been dismissed following refusal by Committee Members contrary to Planning Officer advice. There may be good reasons for the decision of the Inspector in such cases which are unrelated to the quality of the advice given in the original report, but the Chief Planning Officer will review the case and ensure that any lessons that need to be are learnt.
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