

REPORT OF THE HEAD OF PLANNING AND REGENERATION

REVIEW OF PLANNING COMMITTEE PROCEDURES.

Cabinet Holder Cllr R J Chesterton
Responsible Officer Jenny Clifford, Head of Planning and Regeneration

Reason for Report: To review Planning Committee procedures in light of issues that have arisen and following visits to other Local Planning Authorities undertaken in 2012/13.

RECOMMENDATIONS:

1. **That Members note the consultation responses and recommendations of the Working Group.**
2. **That the following be recommended to Standards Committee:**
 - i) **That a clear guide to Planning Committee procedures is produced to inform the public and other participants together with a parallel guide on the planning system to address any misinformation and misconceptions.**
 - ii) **That Legal advice for the Council as decision maker is available to assist Planning Committee with legal input as required on a case by case basis and a legal officer 'on call' to assist in person during the meetings if requested.**
 - iii) **That who speaks, when, the number of speakers, length of speaking and order remain as existing.**
 - iv) **That the same speaking rights be extended to 'implications' reports.**
 - v) **That the questioning of speakers for reasons of clarification be allowed through the Chairman.**
 - vi) **That clear written procedures be put in place regarding voting, that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.**
 - vii) **That full committee and Planning Working Group site visits continue as existing, but that clearer written procedures for both be put in place.**
 - viii) **That the protocol for making decisions that are not in accordance with officer recommendation remains as existing.**
 - ix) **That an annual review of planning decisions be undertaken via Planning Committee site visit.**

3. That it be recommended to Standards Committee that the Local Government Association's 'Probity in Planning for Councillors and Officers' 2013 be adopted as best practice.
4. That final recommendations 2, 4, 5, 6 and 7 relating to venue layout, attendance and advice, agenda format and order, report format and contents and officer presentations be agreed.
5. That subject to this service continuing to be offered, the Planning Advisory Service be requested to work with the Council in undertaking a peer review of Planning Committee and a further report be presented to Planning Committee following the receipt of recommendations from the Peer Review. The report to approve an action plan incorporating Planning Committee procedure issues.

Relationship to Corporate Plan: The operation of the Planning Committee in the determination of planning and other related applications as direct links to all four of the emerging Corporate Plan priorities: economy, community, homes and the environment.

Financial Implications: Increased efficiency will lead to savings. Changes to Planning Committee procedures may also increase costs if further ICT such as an electronic voting system is proposed.

Legal Implications: The existing procedures for Planning Committee at Mid Devon stem from the Constitution. Recommendations from the Planning Committee on changes to their procedures will need to be approved by Council after consideration by the Standards Committee and the Monitoring Officer.

Risk Assessment: Planning decisions involve balancing many competing interests and works best when officers and Members have a clear understanding of their roles and responsibilities together with the context and constraints within they operate. It is important that the decision making process is fair and transparent and procedural matters are set out clearly. All these factors act to reduce the risk of challenge.

1.0 INTRODUCTION

1.1 The review of the operational procedures in connection with Planning Committee was requested by members of that Committee. Members of Committee defined the scope of that review. A report was considered at the meeting of 19th June 2013. A copy of the report is attached as **Appendix 1**. A review was undertaken by a member working group in 2012/13 in conjunction with an officer. This included visits to a range of other councils to compare and contrast planning committee procedures with the aim of identifying best practice. The report identified a series of issues for consideration within the review of Planning Committee procedures. These were endorsed by Planning Committee:

- Information publicising committee procedures.
- Layout of venue.
- Participants.
- Agenda format and order.

- Report format and contents.
- Officer presentations – content, visuals, format and length.
- Speaking – order, number, time.
- Voting.
- Site visit arrangements.

Planning Committee subsequently also asked that ‘implications’ reports written when Members indicate that they are minded to determine an application differently from the officer recommendation are also included in the scope of this report on procedures.

1.2 On 19th June 2013 Planning Committee resolved that a public consultation exercise be undertaken and that a further report incorporating the results of the consultation be brought before the Committee for consideration. A public consultation exercise took place over a five week period between 17th September and 22nd October 2013. In addition to Parish and Town Councils, Elected Members and agents on the Agent’s Forum contact list were written to and given the opportunity to participate. Members of the public were also asked for their views.

1.3 Consultation responses were received from the following:

- 14 Parish and Town Councils
- 2 Agents
- 3 Members of the public (2 of which were from then current or previous Parish Councillors)
- 1 District Councillor
- Members of MDDC Scrutiny Committee

1.4 Consultation responses were generally arranged in response to the topic areas and recommendations set out in the 19th June report. Some additional comments and feedback were also received. The results of the consultation exercise have been summarised and are set out below. A summary of the consultation responses is attached at **Appendix 2**. Background information on each of the issues should also be referred to provide context and is located within the earlier report attached at **Appendix 1**.

1.5 Following receipt of consultation responses, the Working Group held a further meeting in order to consider the representations and make a series of recommendations to Planning Committee. Further meetings have subsequently been held with the Chair of Planning Committee and the Cabinet Member of Planning and Regeneration.

2.0 **GUIDANCE AND ADVICE.**

2.1 The Local Government Association has produced guidance on probity issues arising in planning. A copy is attached at **Appendix 3**. This guidance was reissued in 2013 in order to reflect changes introduced within the Localism Act 2011. The guide seeks to clarify how councillors can get involved in planning decisions on behalf of their communities in a fair, impartial and transparent way. It also provides the guidance in respect of the following issues relevant to the scope of this exercise:

Officer reports to Committee.

'As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include 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.*
- Reports should have a written recommendation for a decision to be made.*
- Reports should contain technical appraisals which clearly justify the recommendation.*
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.*

Any oral updates or changes to the report should be recorded.'

Public speaking at planning committees.

'Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.'

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

New documents should not be circulated to the committee; councillors 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. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors 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.'

Committee site visits.

'National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are

arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- Visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already.*
- The purpose, format and conduct should be clear at the outset and adhered to throughout the visit.*
- Where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply.*
- Keep a record of the reasons why a site visit is called.*

A site visit is only likely to be necessary if:

- The impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers.*
- The comments of the applicant and objectors cannot be expressed adequately in writing or*
- The proposal is particularly contentious.*

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.'

- 2.2 The Guide goes wider than the scope of this review to date by also addressing the general role and conduct of councillors and officers in planning matters; the registration and disclosure of interests; predisposition, predetermination or bias; development proposals submitted by councillors and officers and council development; lobbying; pre-application discussions; decisions which differ from a recommendation; annual review of decisions; complaints and record keeping.
- 2.3 The review of Planning Committee procedures undertaken to date offers an opportunity for the contents of the Guide to be considered and adopted as best practice. This will need to be recommended to Standards Committee. The guide has previously been distributed to members of Planning Committee.
- 2.4 The Planning Advisory Service currently provides support to Local Planning Authorities in delivering efficient and effective planning services, to drive improvement in those services and to respond to and deliver changes in the planning system. An opportunity has previously been available for a peer review of the way Planning Committee operates and the quality of decisions made in order to deliver best practice and improvement. However at the time of writing this report the future availability of such a review is in serious doubt

due to uncertainties over the funding of the Planning Advisory Service in the next financial year. However subject to funding being secured and a continuation of the offer of peer review, a request for assistance in this areas could be made of the Planning Advisory Service. Previously such reviews have been undertaken by officer and councillor peers with planning experience. It is purely to be used as a guide as the scope and focus for the review is agreed with each individual authority. The cost of the review has to date been covered by the Planning Advisory Service.

- 2.5 The current authority for procedural rules in relation to public speaking and good practice for Councillors in dealing with planning matters is the constitution. Relevant extracts are attached at **Appendix 4**.

3.0 **RESPONSES TO THE CONSULTATION AND RECOMMENDATIONS.**

- 3.1 A total of 24 responses to the consultation have been received. The consultation was formatted around series of key issues and changes recommended by the Working Group made as a result of the visits to see other Authority's Planning Committees in operation. The responses have been organised according to the issue / change suggested and the nature of the responder in **Appendix 2** attached to this report. **Appendix 2** also sets out comments received on a range of other planning and Planning Committee related issues. Recommendations in this section are identified as those initially made by the Working Group prior to the consultation exercise, followed by a final recommendation taking into account comments received. Main outcomes of the consultation process have been summarised. Officer comment has also been added where applicable.

- 3.2 This section of the report has been formatted to collate information on an issue by issue basis.

3.3 **INFORMATION PUBLICISING COMMITTEE PROCEDURES.**

Initial working group recommended change 1: That a clear guide to Planning Committee procedures is produced to inform the public and other participants.

Consultation responses:
Strongly supported.

Following the receipt of consultation responses, the working group was also keen to ensure that the opportunity was also taken guidance to be produced on the planning system and planning decision making in order to address misinformation and lack of knowledge.

Final recommendation 1: That a clear guide to Planning Committee procedures is produced to inform the public and other participants together with a parallel guide on the planning system to address any misinformation and misconceptions.

3.4 **LAYOUT OF VENUE.**

Initial working group recommended change 2: That the layout of the venue is amended to a 'U' shape once display screens have been upgraded in the Council Chamber.

Consultation responses:
Generally supported.

The working group wished to bring to the attention of members of committee the need to be seen to be listening to speakers. The layout of the venue allows the speakers to address the whole committee and for them to interact with committee members while speaking.

Officer comment: The initial recommendation of the working group has now been superseded by the upgrading of display equipment in the Town Hall Council Chamber and more recently by the change in venue of the Planning Committee to the Phoenix Chamber in Phoenix House. In the latter location, visual display equipment has been installed with multiple screens together with a removable desk-based microphone system. The tables and microphone system lend themselves to straight lines rather than a curved arrangement. The layout is also limited by the location of floor boxes providing power and connections to the sound system and computer network. The layout is 'U' shaped with the top row comprising the Chairman, Vice Chair and officers. Members of the Committee are located on either side. Angled seating for Ward Members is located off one side and public speaking space is at the open end of the layout, beyond which is located public seating. Members of Committee are either side on or facing the speakers and public speaking. Multiple screens allow all to see presentations.

Planning Committee has only recently been relocated to the Phoenix Chamber. The current layout in the room is therefore still new. Whilst no change to the layout is currently recommended it would be possible to review this.

Final recommendation 2: That no change is made to the layout of the committee at this time.

3.5 PARTICIPANTS.

Initial working group recommended change 3: That Legal advice is available in the preparation of the agenda, pre committee briefing and in person at the meeting itself.

Consultation responses:
Mixed response: Some support, but there was confusion over the function of legal advice – who the advice is intended to benefit. It was not understood by all that legal advice is intended to assist the Council in its decision making rather than other participants. There was some concern over cost and the implications on legal resources. It was questioned whether a Legal Adviser needs to be present at every meeting.

Officer comment: The working group raised participation in relation to the availability of legal advice. Such advice is of benefit to the Planning Committee in terms of procedural issues, the legal parameters within which decisions are made and risk to the Council. Most other authorities visited had legal representation at Planning Committee meetings meaning that any issues / queries that arise during the meeting are able to be answered during the debate. Legal representation at Planning Committee as a matter of course has not been available for many years due to its resource implications upon the legal team. However, there remains the ability to brief Legal on the contents of the agenda in advance and arrange for a legal officer to be on call if required or to be present for particular items. This is easier with the Phoenix Chamber venue. (It should be noted that there might be occasions where Legal officers with planning knowledge as not available if on leave or sick. The service will endeavour to provide Legal advice on call, but is unable to guarantee it's availability on all occasions).

Final recommendation 3: That Legal advice for the Council as decision maker is available to assist Planning Committee with legal input as required on a case by case basis and a legal officer 'on call' to assist in person during the meetings if requested.

The working group also wished to ensure that in the case of ward member call in of applications to committee, that the ward member attend the meeting. The working group recognised that a statement could be provided instead in exceptional circumstances.

3.6 ATTENDANCE – AVAILABILITY OF ADVICE.

Initial working group recommendation: There is no change proposed.

Consultation responses:

Few received. One respondent agreed. Another felt that other officers should attend only if there is an identified need for them to be there. A request was made for the Cabinet Member for Planning and Economic Regeneration to be present at all Planning Committee meetings to monitor performance.

Officer comment: Planning Committee meetings are in public with press often present. The issue considered by the working group was whether the right level of advice is available to members of Committee to assist in their decision making. More senior planning officers make presentations and are available to answer questions. A lead planning officer also attends (normally the Head of Planning and Regeneration). This is supplemented by other officers from within the Council, together with those from external consultees such as the Highway Authority and Environment Agency if available and required. Your planning officers often anticipate when the presence of a consultee would assist and make arrangements. Planning Committee has the ability to invite the presence of consultees to assist in decision making.

Final recommendation 4: no change.

3.7 AGENDA FORMAT AND ORDER.

Initial working group recommendation: There is no change proposed.

Responses:

Generally agreed, but it was commented that if no members of the public are present to hear an item there is often little discussion of it and full details should be presented and considered for each case.

Officer comment: Planning Committee agendas follow a set order. In accordance with the constitution and other committees of the Council standard agenda items at the beginning of the meeting are apologies and substitute members, public question time, minutes of the previous meeting and Chairman's announcements. These are then followed by the planning related content with the order being:

- Enforcement items,
- Deferrals from the plans list,
- The plans list (where most of the planning and other related applications are considered),
- The delegated list (list of decisions taken under delegated powers),
- Major applications with no decision (to assist in timely decision making and management of major applications. This was introduced to help performance in terms of the speed of major application decision making),
- Appeal decisions (to report on recent appeal decisions received),
- Other agenda items (larger scale applications if not included in the plans list, 'implication' reports, planning performance and service management reports, legislation changes).

Currently at the beginning of consideration of the plans list, the Chairman establishes which items have speakers or the Committee wish to debate. Where neither of these apply, the items is brought forward and voted upon in order to assist the efficiency of the meeting.

The order of planning related content is open to amendment. Other Councils operate variations of this, in part dependent upon the scheme of delegation. Enforcement action is more widely delegated to officers in other Councils. The running order of the agenda seeks to be logical, with the ability of the Committee to pull items forward if required.

Final recommendation 5: no change.

3.8 REPORT FORMAT AND CONTENTS.

Initial working group recommended change 4: That the case officer name be included and in the case of refusals, the reasons for refusal be moved up to the front of the report to follow the recommendation.

Responses:

Generally agreed. Additional comments about the need for accuracy and precision, reports need to be fair and balanced, reports need to be open to other material considerations beyond the Development Plan policies, reports are too long, information should not be summarised, major decisions should include an executive summary, where policies, case studies or precedents are

referred to they should be available. Comment received that members need to read the reports in full before the meeting.

Officer note – Planning Committee reports are produced using a template that pulls through information from the software system. It's ability to accommodate changes to the format, particularly to distinguish report format between those recommended for approval or refusal is limited. At present the recommendation is included at the front of the officer report, with the reason for approval / refusal and conditions are at the end. The intention behind this is that whilst the recommendation is known from the start, the detail and explanation of how it was arrived at is gained from the main body of the report taking into account planning history, policy, consultations, representations and the officer assessment of the material planning considerations. While the recommendation, reason for approval / refusal and conditions can be pulled to the front of the agenda it is not technically possible to vary the running order dependent upon the recommendation. The scope of change available to the Committee report template are limited.

The inclusion of officer names with reports (except enforcement reports) is able to be accommodated. The name of the case officer for applications is already available on the website in public access. It is proposed that this is not extended to enforcement reports due to the nature of their content and legal action that can arise. The availability of enforcement officer names against individual reports that are on the internet is not recommended.

At present all consultation responses are typed in full in the officer report including where multiple responses have been received from the same consultee on the same proposal. Members may wish to consider whether they would like this to continue as existing so that the full response of a consultee over time may be seen, or whether only the latest, most up to date response is shown. This would delate earlier responses where comments / concerns have been subsequently addressed.

Final recommendation 6: That planning case officer name is included in the officer reports (enforcement reports to be excluded). That Members consider whether all multiple consultation responses on a proposal continue to be included in the report or only the most up to date.

3.9 OFFICER PRESENTATIONS

Initial working group recommended change 5: That officers review the length and content of presentations to make them more focused and succinct.

Consultation responses:

Supported. Comment made that they need to be short and not repeat the contents of the report. Comment also that they should not incorporate content not included in the officer report.

Officer comment: Agree that officer presentations should aim to be focused and succinct with a description of the development and its location / context by reference to the plans and photographs together with concentration on the

determining issues. It is assumed that the officer report has been read and does not seek to duplicate it.

Consultation comments suggest that officers should not include information in their presentation that is not in their report. However the agenda is issued five working days in advance of the meeting. New information may subsequently have been received that is material to the making of the decision on an application. It is only right that it is brought to Member's attention before the decision is made and will normally be included in the printed update sheet.

Final recommendation 7: That officers review the length and content of presentations to make them more focused and succinct.

Initial working group recommended change 6: That the content of officer presentations be amended to increase the size/ colour of the cursor, the location of photographs be clearly indicated and the title slide be enlarged.

Consultation responses:

Supported. Photos to include date and time also requested. Comment received from a member of the public that the officer photographs were unrepresentative and biased: speakers should be able to present photos too.

Officer comment: Photos are normally labelled with an inset plan showing where they were taken from and a direction of view. Camera time and time recording can be switched on where available. Font size can be reviewed to improve readability. Efforts can be made to increase cursor size in the powerpoint presentation.

Consultation responses requested the ability for other parties to have their photos or other images be shown on the display screens at the meeting. At present such information is more normally circulated to Members in advance of the meeting rather than displayed on the screens. Such requests and associated material would need to be received by a cut off time of not less than 24 hrs in advance, in order for the material to be checked. The Probity in Planning document at **Appendix 3** recommends that no new documents should be circulated at the meeting as Members will not be able to give it due consideration and officers will not have had the opportunity to check of accuracy or provide considered advice on material considerations arising.

Final recommendation 8: That the content of officer presentations be amended to increase the size/ colour of the cursor, the location of photographs be clearly indicated and the title slide be enlarged.

3.10 PUBLIC SPEAKING

Initial working group recommendation: That views be sought on arrangements for speaking at planning committee in terms of who, when, how many, how long for and the order of speakers. Should the questioning of speakers by Committee Members be included?

3.10.1 When may public speaking take place?

Consultation responses:

An extensive range of views were received on the arrangements for speaking at Planning Committee. These were not all consistent the importance of adequate speaking opportunity was strongly supported. Representation supported the ability to speak to an application at the time of its consideration in the agenda rather than being restricted to speaking up front as part of public question time. This was seen as being disjointed from the consideration of the application itself. Responses wished in the main to see opportunities for public speaking expanded.

Officer comment: The Council's procedure rules allow for public question time, normally at the beginning of the agenda. Whether to allow further opportunity for public speaking is at the Council's discretion, but is good practice and most councils do. Currently public speaking takes place at the point in the agenda when individual applications are considered.

3.10.2 Who is able to speak and the number of speakers.

Consultation responses:

All interested parties in planning decision making wish to have the right to speak at Planning Committee if they so wish. Consultation responses in the main wished to see the number of speakers allowed extended. Many responses suggested that speaking differentiate between major and non-major applications with more speakers and longer speaking allowed for major applications.

3.10.3 How long to allow for speaking.

Consultation responses:

A wide range of suggestions were made over speaking time, but the general theme in responses was that more time should be allowed with opportunity for 'comeback' to respond to points raised by other speakers and arising from Committee Member debate. A number of responses expressed the wish to see speaking time extended to 5 minutes each.

Officer note – Care will be needed to ensure equality and fairness between scheme promoters / supporters and objectors over time allowed to speak. The probity in planning guidance suggests that speakers be asked to direct their presentation to reinforcing or amplifying representations already made in writing. To assist in the running of the Committee, it is also helpful that comments made by earlier speakers are not repeated. The benefits of allowing additional time to speakers will need to be balanced against the potential to add to the overall length of Planning Committee meetings. Information from other Councils in the area indicates speaking time is usually limited to either 3 or 5 minutes each. It does not appear common practice elsewhere for speaking time to vary between major and non-major applications.

3.10.4 When public speaking takes place and the order of speaking.

Consultation responses:

When public speaking takes place: Representations requested more flexibility over speaker numbers to allow all to be heard at the time of the consideration of the application in question rather than up front during public question time.

Order of speaking: Representations received when considered by group (Parish Council, Agent / applicant / Members of the public /individual Parish Councillors) all wished to be able to address the Planning Committee last in order to address 'inaccuracies' arising from earlier speakers. There was therefore no consistency in the running order of speakers suggested within the consultation responses. Time for 'comeback' from speakers was also requested.

Officer note – At present in accordance with procedure rules, one spokesperson in favour of the application and one spokesperson objecting to an application are allowed to speak, as is a Parish or Town Council representative. Each may speak for up to 3 minutes and is taken in the order of supporter, objector, Parish. The Ward Member(s) is then called to speak and is not time limited. On an exceptional basis when there has been a particularly large, significant or controversial application (that would usually warrant holding a special meeting) at the Chairman's discretion additional speakers have been allowed. Were the length of speaking to be extended, this would need for fairness to be extended for both supporters and objectors to a scheme together with the Parish Council. Members will need to conclude whether this will add benefit to their consideration of applications and balance this against the increase in meeting length.

Whatever order of speakers, there will be disappointed parties that would wish to speak last. At appeal, the Planning Inspectorate operate an order of case that allows the applicant final say by going last.

At present public speaking to an 'implications' report is not allowed other than during public question time. Members are asked to clarify their views on this: whether for reasons of consistency this should be allowed as for applications, or left unchanged.

The working group gave consideration to whether Ward Member speaking should be time limited, but did not come to any conclusions other than noting a need for speaking to be focussed and succinct.

3.10.5 Questioning speakers.

Consultation responses:

Generally there was wide-spread support for the questioning of speakers in order to provide clarification of specific points or queries arising from Committee Member debate.

Officer comment: Allowing questions to be asked of speakers may provide helpful clarification for Committee Members. Such a system is in operation elsewhere is in generally seen as being beneficial. It will need to take place through the Chairman.

Members will need to consider whether to make any changes to public speaking arrangements at Committee.

Public speaking final recommendations:

9. That who speaks, when, the number of speakers, length of speaking and order remain as existing.
10. That the same speaking rights be extended to 'implications' reports.
11. That the questioning of speakers for reasons of clarification be allowed through the Chairman.

3.11 VOTING

Initial working group recommended change 8: A clearer procedure be put in place regarding voting: that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.

Consultation responses: Supported to aid understanding of proceedings.

Officer note – Many of these recommended changes are now followed and represent best practice. Electronic voting is not currently operated, although the microphone system in the Phoenix Chamber would be compatible with an electronic voting system should one be implemented in the future. Additional equipment would need to be installed to implement this. It was considered recently when specifying requirements for the new Phoenix Chamber system but was dismissed at this time on cost grounds.

Final recommendation 12: That clear written procedures be put in place regarding voting, that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.

3.12 SITE VISIT ARRANGEMENTS

Initial working group recommended change 9: That the arrangements for site visits be reviewed. Should the Planning Working Group continue or should site visits following a deferral be open to all members of Planning Committee to attend? Clear procedures on the operation of site visit are needed.

Consultation responses:

Respondents considered site visits to be vitally important and favoured them being available as a matter of course to all members of committee to attend together with other interested parties including Parish / Town Councils, objectors, supporters and ward members. It was suggested that they be made mandatory for committee members with concern being expressed in the event of poor attendance. The timing of site visits was raised as an issue, particularly in relation to traffic and parking and availability to attend during the working day. Some respondents suggested multiple visits at different times of the day.

Officer comment: At present two different forms of site visit take place.

1. Major applications - Members review a list of major applications as part of the agenda and indicate for cases that will be decided by them, which they would like to visit in advance in order to gain familiarity with the proposal, the site and its surroundings. Such site visits are open to Committee members only with an officer present to describe the application and to answer questions. Such pre-committee meeting help with timely decision making on major applications and were introduced as a means to assist committee consider such applications but also to reduce delay.
2. Planning Working Group – Committee may defer an application for a site meeting of the Planning Working Group in order to assess a particular aspect of the site / the application or a particular issue that is identified at time of deferral. It is important that the site visit have a specific purpose. The Planning Working Group comprises the Chairman and 6 other committee members. Ward Members, one representative of each of Parish Councils, applicant / supporter and objector are invited to attend. Members are accompanied by an officer and if specifically requested, a representative of a consultee such as Highway Officer. The officer describes the application and answers questions. Representatives of applicant / supporter, objector and the Parish are asked for their views. The representatives are then asked to withdraw and allowing for a member discussion. Members of the Planning Working Group are asked for their observations when the application is considered at the Planning Committee meeting.

Devon County Council hold a site visit and local meeting at which there is opportunity for the public to attend and ask questions in advance of the final consideration of the application at a separate meeting of the committee. The meeting takes place in a venue local to the application site. Such an arrangement increases public participation in the consideration of the applications, but is resource heavy and takes time to organise. It adds to the cost of considering applications and risks delay. The nature of County Council applications – often waste and mineral proposals together with the lower number of applications is considered more suited to this arrangement. Most Councils some form of site visit arrangements in place.

Members are asked to consider whether any changes should be made to the existing site visit arrangements. It is recognised that clearer procedures need to be put in place.

Final recommendation 13: That full committee and Planning Working Group site visits continue as existing, but that clearer written procedures for both be put in place.

4.0 OTHER ISSUES RAISED WITHIN RESPONSES.

- 4.1 Consultation responses took the opportunity to raise a number of other issues in relation to planning decision making and planning committee. These are listed in **Appendix 2**. Some responses considered that the scope of the consultation to be too narrow with a wider review of planning being required.

- 4.2 It was suggested the planning committee should meet locally to the application (particularly for large scale proposals).
- 4.3 In particular Parish Councils (who made up the majority of respondents) considered that more regard should be had to their comments on applications by officers. They wished less application delegation to officers and therefore more applications to be referred to planning committee. There was a distrust of pre-application meetings between officers and members.
- 4.4 Abstaining from voting by committee members was criticised by the responses. It was even suggested that it should not be allowed and was viewed as ducking out of making a difficult decision.
- 4.5 Several criticisms were made of the enforcement of planning, particularly over condition compliance.
- 4.6 It was suggested that further guidance be given to members over contact with the applicant / objectors, lobbying and the declaration of interests.
- 4.7 It was observed in several responses that those attending the meetings did not feel that they had been listened to. They felt marginalised and that the committee process as a whole did not put the public and community at the heart of decision making. Officers were felt to be too influential in decision making and that committee members should be completely free to make whatever decision they so wish.

Officer comment: A wide range of additional issues were raised within consultation responses. Planning decision making operates within legal constraints which are not always understood by all participants. This can lead to frustration and a lack of understanding of how a decision has been arrived at. This can be improved by incorporating information of planning decision making within guidance. It is important to ensure that procedures for committee allow participation in a meaningful and equitable way that balances different interests so that those participating feel that they have had a chance to have their say. A peer review of the operation of planning committee through the Planning Advisory Service (if it continues to be offered) could provide an external assessment of issues such as public engagement.

5.0 **IMPLICATIONS REPORTS.**

- 5.1 Since work commenced on this review of procedures in relation to Planning Committee, the issue of officer implication reports has also been raised and officers were asked to include it within this report. It was not considered by the working group.
- 5.2 At previous meetings of Planning Committee, a protocol for making handling appeals when the committee decisions not in accordance with officer recommendation and the handling of subsequent appeals was agreed. As agreed at the meeting of 17th July 2013 this protocol states:

In cases where decisions are made which are not in agreement with

officer's recommendation, the following protocol will be followed:

The Planning Committee, based on the debate and discussion at the Committee meeting, shall in all cases:

- **Indicate the decision that they are minded to make together with the reasons for doing so and that the item be deferred for the receipt of an officer report at a subsequent meeting setting out the implications for the proposed decision and the reasons given.**
- **Agree the full wording of the reasons for refusal or the conditions to be imposed prior to a decision being taken.**
- **Agree their reasoned justification for reaching the particular decision, which will be set out in the minutes. (Which can be sent with the Committee Report when the initial appeal papers are sent.)**
- **Agree which Members (a minimum of 3) will:**
 - 1. Prepare any written statement for written representation appeals, informal hearings or public inquiries.**
 - 2. Attend pre appeal meetings with officers, legal advisors and consultants, when necessary.**
 - 3. Appear at any Informal Hearing or Public Inquiry to present the Council's case.**
 - **As an appeal proceeds and the form and type of appeal is known consider appointing external planning consultants where necessary. This will only be considered for the more complex Public Inquiry cases).**

Officers will:

- **Provide Members with professional and guidance in preparing cases and statements.**
- **Ensure relevant documents are dispatched and timetables are adhered to.**
- **Arrange venues and all notification documentation and publicity.**
- **Provide support at informal hearings / public inquiries in procedural matters and defend any application for costs.**
- **(Officers will not give evidence or comment on the merits of cases at informal hearings / public inquiries).**
- **Appoint consultants when required and assist the consultants in preparing the Council's case.**
- **Attend site inspections.**

5.3 Whilst not at that time specifically requested, some consultation responses referred to this protocol. The deferral of an application when committee is minded to decision it is a way that is not in accordance with officer recommendation was not supported and seen as being undemocratic by giving the applicant a second opportunity. The comments presupposed circumstances only where committee wished to refuse permission rather than approve contrary to officer recommendation. Consultation responses wished the original decision to reject to be accepted as binding. However Scrutiny Committee commented that there had been occasions where the Council had been vulnerable as Planning Committee were unable to provide reasons for the decision.

- 5.4 The approach within the protocol allows for a more considered assessment of prospective reasons for refusal, including policy context as planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. This is important as there is a right of appeal against the decisions of the local planning authority in the case of refusals, conditions or arising from non-determination. Local planning authorities are expected to be able to justify their decisions, behave reasonably and if not found to have done so, are at risk of a cost award against them at appeal. It is your officer's advice that the approach to decision making as set out above where members are minded to make a decision contrary to officers is retained in order to ensure robust and defensible planning decision making. The alternative is to formulate full reasons for refusal together with policy references relied upon 'on the hoof'.
- 5.5 It is clear that such 'implications' reports must be approached with care – balancing the need to clearly advise members of potential implications of the proposed decision, yet not being seen as undermining the position that members are minded to take in the event that an appeal is lodged. This is a difficult balance to achieve, as officer advice might need to reflect on the likely strength of a reason for refusal and the sufficiency of evidence to support it. Pages 13 and 14 of the Probity in Planning Guidance (**Appendix 3**) apply and refer to either adjourning for potential reasons of difference with officers to be discussed or where there is concern over the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed. The guide refers to detailed reasons being required with Councillors being prepared to explain in full their planning reasons for not agreeing with officers. It states that officers should be given opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome and chances of a successful award of costs against the council, should one be made. Officer advice is of course professional advice and delivered in accordance with the code of practice of the Royal Town Planning Institute – officers cannot be expected to change their recommendation or views based on the approach that members wish to take. However whilst still retaining their professional view, they are able to continue to advise members.
- 5.6 It has been suggested by some members that the implications report should always be written by a different officer to the case officer. This is possible, but it needs to be understood that this will have a resource implication as the second officer will need knowledge of the application and site in order to write the report.

Recommendation: That the protocol for making decisions that are not in accordance with officer recommendation remains as existing.

6.0 ANNUAL REVIEW OF DECISIONS.

- 6.1 Both the constitution and the probity in planning guidance refer to reviewing planning decision making via annual visit to a sample of implemented planning permissions in order to assess the quality of decision making and that of the development. The guide advises that the essential purpose of such

a review is to assist planning committee members to refine their understanding of the impact of their decisions.

6.2 Such a review normally takes place via a day of site inspections in early summer. However it is dependent upon committee members being fully engaged in the review. The last was held in 2014, when only 5 Members attended.

6.3 Committee site visits can also be arranged on an ad hoc basis outside the District as required to see examples of particular application types. The intention is to further Committee's knowledge and decision making. This previously took place in relation to large wind turbines. Members are requested to flag up any such requests with officers.

Recommendation: That procedures remain unchanged with the need for an annual review of decisions to be undertaken by Planning Committee Members via visits to a sample of sites.

7.0 CONCLUSIONS.

7.1 Members of the working group welcomed the opportunity to visit other Planning Committee meetings in order to identify best practice and issues for consideration at Mid Devon. The main finding of the working group was the high degree of consistency between Councils in relation to the overall operation of Planning Committees within the local area. However several differences, particularly in public speaking arrangements were found. Detail of the operation of Planning Committee and its associated procedures have been the subject of a public consultation exercise. A range of responses were received, although mainly from Parish and Town Councils. Few comments from applicants, agents, objectors or the wider public were received.

7.2 It is clear that the existing written procedures derived from the constitution for the working of this Committee are not clear in several areas and need to be overhauled. The production of clear written procedures is welcomed by all and will be prepared once consideration of these recommendations has been completed including ultimately by Council. This review and associated consultation has taken place with the aim of achieving fair and consistent processes that are easily understood by all present, allowing participation at Planning Committee meetings. Historically, feedback was sought from the public present at meetings via a questionnaire. Although the number of questionnaires completed was small, this approach can be resurrected in order to get an understanding of the experience of the public and how it might be improved.

Contact for any more information	Head of Planning and Regeneration (Mrs Jenny Clifford) 01884 234346
Background Papers	Planning Committee October 2010 (officer reports), 19 th June 2013

	<p>Consultation responses Probity in Planning for councillors and officers – Local Government Association and the Planning Advisory Service November 2013 Mid Devon District Council Constitution</p>
File Reference	None.
Circulation of the Report	Members of Planning Committee, Cllr Richard Chesterton.