

PLANNING CONTROL COMMITTEE – ADDITIONAL GUIDANCE

Introduction:

The aim of this additional guidance is to supplement the Members Planning Code of Good Practice which forms part of the Council's Constitution and ethical framework. This should be read in conjunction with the Members' Code of Conduct and the Protocol on Councillor- Officer Relations. The purpose of this guidance is to provide additional advice on the standards to be applied specifically in relation to planning matters. The key purpose of Planning is to proactively manage development in the wider public interest.

This note does *not* replace or otherwise affect the ability of Community Forums to receive any presentations from developers, their agents and / or Council officers, ask questions and provide comments accordingly under Section 9.7.6 of the Constitution.

1. Planning Control Committee

The Terms of Reference can be found in the constitution at Section 8 ([Council constitution | North Herts Council \(north-herts.gov.uk\)](#))

The Planning Control Committee (PCC or 'the Committee') considers schemes referred to it under the provisions of the National Scheme of Delegation (the NSD) and local operational guidance on its implementation, the Scheme of Management.

Under the NSD, certain types of applications, including minor and householder developments must, in almost all circumstances, be determined by officers.

Other application types *might* be referred to PCC. But this is subject to a particular referral process.

Under the NSD, former rights which allowed Councillors to 'call-in' applications have been removed. Ward councillors may no longer request that certain applications from the weekly lists are called in. Similarly they can no longer call-in applications in support of Parish Council objections.

Councillors retain a right to address committee under speaking procedures.

2. Decision making:

Planning decisions should be made impartially with sound planning judgement.

When planning applications are reported to Committee, the report will contain an Officer recommendation as to whether planning permission should be granted or refused.

Members are entitled to bring their own judgment to bear on planning applications and to make a decision contrary to Officer recommendation **but** it is important that such decisions are taken on sound planning grounds and produce substantive and defensible evidence to support the decision in all respects which will withstand scrutiny at a possible appeal (if planning permission is refused) or if the decision is referred to the Local Government Ombudsman.

Members should bear in mind their overriding duty is to the whole community, not just to the people in their Ward and, taking account of the need to make decisions impartially, they should not favour, or appear to favour any persons, business or locality irrespective of other considerations.

The Planning Advisory service provides some additional useful advice for councillors and officers making planning decisions, called Probity in Planning (December 2019).

3. Pre Application Discussions:

The National Planning Policy Framework recognises the value of and encourages Pre-Application discussions between Local Planning Authorities and developers and Members can also encourage the use of this to reduce the pressure they may experience from members.

The NPPF supports the use of pre-application discussions. Proposals for major development should be informed by early engagement with neighbours and local communities as well as with the local planning authority and other, relevant parties.

As a general principle, Members should, where appropriate, **seek to encourage** promoters of development schemes to **engage in the Pre-Application process**.

Promoters of development schemes wishing to engage in Pre-Application discussions will be advised that:-

- (a) if they wish to secure Member input into the Pre-Application discussions they can request that the Ward members attend a meeting with a Planning Officer present.
- (b) although (subject to the Environmental Information Regulations Act and any other relevant legislation) the Council will respect the confidentiality of information which the scheme promoter makes clear is disclosed in confidence, Members will have access to Council files on Pre-Application discussions.
- (c) If a Member wishes to express their views on Pre-Application discussions they may set out those views in writing sent to the relevant

Planning Officer who will place a copy of the communication from the Member on the Pre Application file.

Members should be aware that such comments may in due course become publicly available. Members should not disclose any confidential information or documents held on Pre Application files other than to another Member or to an officer of the Council.

To ensure that decisions remain impartial, it will be made **clear** at pre-application meetings that:

- Officers' initial views and advice are given on a without prejudice basis which will be consistent with the provisions of the current adopted Council policy (unless there are clear material considerations that would justify consideration of a development contrary to policy;)
- no decisions may be made or advice given which would bind or otherwise compromise the Planning Control Committee (or the senior Officer responsible for Planning if delegated to make the decision); and
- for all pre-application meetings, a note of the discussion (not a formal advice note) will be taken by the Planning Officer, including details of those present, and will be made available for public inspection subject to the usual rules about access to information.

At least one appropriate Planning Officer will be present at all such meetings. Members may, following discussion with the appropriate Planning Officer, take part in organised post-submission meetings with applicants or other parties.

If Members do engage in pre-application discussions with developers they should observe the rules on lobbying. However North Herts encourages appropriate Member engagement in the pre application process. This assists in responding to communications from residents in an informed manner (subject to the advice on confidentiality above).

4. Members Briefing:

The introduction of member briefings at North Herts will assist in reducing the length of the Committee and also the risk of appeals. These are separate to the Chair's procedural briefing held prior to the PCC meeting.

It is essential that Members should understand that an **informal briefing is not the Committee meeting** and therefore no decisions or agreements will or should be taken at the briefing.

The informal briefing is essentially a fact-finding exercise to allow Members to understand more about the proposal **before** an application is submitted to the council, once an application has been submitted to the Council **or** before formal consideration of the scheme at the Committee.

Members can ask questions about the scope of the proposal and about any issues they do not understand. It is **not a forum for debate** or for stating opinions about the application as a whole and not for the Committee Members to declare how they will vote at the formal meeting.

Whilst Members can begin to form views about the scheme and certain aspects of it, it is important at this stage for members **not to form and express firm views** or to decide how they will vote at the Committee meeting. If they do so, they will not be able to take part in the Committee consideration and determination of the application as they will be deemed to have predetermined the application and will have closed their minds.

The meeting is not a public meeting. The primary audience for briefings will be Members who are likely to sit on the determining Committee. However, briefings may be open to other (or all) Members including, but not limited to, Committee substitutes, ward members and members of the Council's internal Strategic Planning Project Board.

Formal minutes or notes of the meeting **will not be made or published** as this is not a formal committee meeting and no decisions will have been taken. A record will be kept of the fact that the meeting took place and who attended the meeting and general topics/subject areas will be noted on the application record.

Although attendance by Members will be encouraged, non-attendance at informal briefings will not prevent their subsequent participation in deciding an application when it comes before the Committee.

Facilitation of the Briefings will be by the planning team and in all cases at least two planning officers will be in attendance to deliver the presentation and address questions raised by Members

The Members briefing will be used to enable Members to bring matters to be discussed **prior** to a committee decision making and can also be used for members to discuss matters which they seek to call in.

5. Site Visit Protocol:

A decision to carry out an organised, accompanied site visit may be made where a proposal is contentious or complex and the impact is difficult to visualise or assess from the plans or any supporting presentation, including photographs taken by officers.

The visit is intended to enable Members to gain knowledge of the proposal and its physical context. The purpose of the site visit is to obtain information relevant to the determination of the application only. The decision should not be arbitrary, unfair or be used as a lobbying device.

Site visits can, however, cause delay and additional cost and can be difficult to co-ordinate around the commitments of multiple Councillors and Officers, so should only be used where the expected benefit is clear and substantial and in accordance with the criteria set out in this protocol. The visit can assist in understanding

- the granular details of a site where development is planned;
- the details of the surrounding area such as levels and proximity to other buildings; and
- issues raised by residents and others about the plans that need to be experienced such as noise/pollution/smells near the site

This advice does not preclude Members from undertaking unaccompanied site visits (for any application) for their own information where the application site and / or key receptors can be viewed from publicly accessible vantage points such as public highway or rights of way.

Requests for a Site Visit:

A site visit request will need to be made in writing unless it has been deemed necessary by the Development and Conservation Manager in consultation with the Chair. It can be made in one of two ways:

i) Pre Committee:

Site visits should usually take place prior to Planning Control Committee to support expedient decision-making.

If a site visit is conducted prior to the item being heard at the Planning Control Committee then the item cannot be again deferred for a further site visit unless there are new planning matters to be considered on the site (see advice below).

A site visit will be arranged:

- If before a planning application is put on the Planning Control Committee Agenda the Development and Conservation Manager and the Chair agree that a Planning Control Committee site visit should be conducted sometime before that Committee meeting.
- For all sites of more than 200 homes where the application is to be determined by the Planning Control Committee
- Where requested in writing by at least 4 members of the Planning Control Committee

- Where a Ward Councillor who intends to speak at Planning Control Committee in this capacity considers that PCC should visit the site and at least one of the criteria above is satisfied in support of this request

ii) At a Planning Control Committee

Any Planning Control Committee Member may propose that a decision on an application be deferred to allow a site visit to take place. If seconded and voted upon by a majority of Members, a site visit will take place.

Members proposing a site visit must state planning reasons for visiting the site and identify how / why the pre-meeting site visit protocols set out above were not utilised and are not sufficient to allow a decision to proceed. This will assist the Committee in determining the proposal to defer. These reasons will be recorded in the minutes.

If an application is deferred for a site visit then the site visit will form part of the formal meeting, which would be resumed / re-presented at an appropriate Committee date following the visit. Attendance at the site visit is required in order to be eligible to vote at any subsequent Committee meeting(s) where the application is considered.

A site visit should not be used as an opportunity to defer consideration or determination of an application. Any proposal to defer a decision at Planning Control Committee to allow a site visit to occur should be wholly exceptional and will require clear justification, seconding and voting upon by a majority of Members.

Practical Arrangements for the site visit

The site visit may take place at any reasonable time during any working day (including the day of the Committee) before the Committee meeting at which it is proposed to determine the application. This should be within standard working hours, but it is recognised that seasonal variations in daylight hours may impact upon the times that might be suggested. Arrangements for a site visit should be communicated at least five working days in advance.

The circumstances where attendance at the site visit will be mandatory are set out above. In all other cases, a site visit should be attended by all members of the Committee wherever possible. The appropriate Council officers will attend the site visit. This would include the Planning Officer and may on occasion include other officers who may be required to provide specialist advice and information relevant to the application.

The applicant will be notified of the date and time of the site visit and if it is proposed to enter onto private land as part of the site visit, it will be necessary to obtain permission from the landowner first.

A site visit is ordinarily to be attended only by Officers and Members of the Committee or substitutes.

Procedure at the site visit

The Planning Officer will explain the proposal to members and provide a summary of the objections and should confirm that the site visit is being undertaken in accordance with the this guidance.

The Chair, or any nominated substitute, will be responsible for the overall oversight and conduct of site visits and will formally open and close the organised site visit.

Members can ask any questions concerning the proposal to the respective officer(s) in attendance, such questions should be limited to factual clarification on the application only and should not provide comment on the merits of the application.

In the event that anyone other than Officers or Members of the Committee is in attendance, the Chair or Planning Officer (as appropriate) will inform those attending the site visit that they should not approach or attempt to speak to or engage with any member or officer of the Council about the application during the site visit and that this is not an opportunity for lobbying, representations, public address or debate.

In order to ensure transparency of public dealing by members, members shall keep together as a group and shall not engage individually in discussion with any local members, applicants, objectors and other interested parties present at the site visit.

Members should not express an opinion on the planning application or on its merits (or otherwise) at the site visit. Members should be mindful at all times of the need to avoid allegations of predetermination or bias, or the fettering of the Council's discretion in relation to the application.

No hospitality may be accepted by members and officers from any party present at the site visit.

A note shall be taken by the Planning Officer of any significant events occurring during the site visit which will include the names of those in attendance which will be available for public inspection.

Procedure at Committee following the site visit

Officers will provide a brief update to members of any significant additional information or issues raised at the site visit.

Following the update, members of the Committee who were not able to attend the site visit should consider whether they have sufficient information before them to enable them to take part in determining the application and, if not, should ask the case officer for further information to ensure they are sufficiently informed or take no part in the deliberation and should abstain from the vote on the proposals.