



**AGENDA PAPERS FOR
PLANNING AND DEVELOPMENT MANAGEMENT
COMMITTEE MEETING**

Date: Thursday, 11 May 2017

Time: 6.30 pm

**Place: Committee Suite, Trafford Town Hall, Talbot Road, Stretford, Manchester
M32 0TH**

AGENDA

ITEM

6. URGENT BUSINESS

The Chairman has agreed to allow the following matter as an item of Urgent Business.

Planning Committee Code of Practice

To consider the attached report of the Director of Legal and Democratic Services and Monitoring Officer.

6

THERESA GRANT

Chief Executive

Membership of the Committee

Councillors Mrs. V. Ward (Chairman), D. Bunting (Vice-Chairman), Dr. K. Barclay, N. Evans, T. Fishwick, P. Gratrix, D. Hopps, E. Malik, D. O'Sullivan, B. Sharp, J. Smith, L. Walsh and J.A. Wright

Further Information

For help, advice and information about this meeting please contact:

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TRAFFORD COUNCIL

Report to: Planning Committee
Date: 11th May 2017
Report of: Director of Legal and Democratic Services and Monitoring Officer

Report Title

Planning Committee Code of Practice

Summary

In response to suggestions from the Standards and Planning Committees the Director of Legal and Democratic has drawn up a Code of Practice for Members and Officers involved with the determination of applications for planning permission by the Planning Committee.

Recommendation(s)

- (1) That Committee members consider the Planning Committee Code of Practice (appendix 1) and recommend the same to Council for adoption under the Council's Constitution

Contact person for access to background papers and further information:

Name: Jane Le Fevre
Extension: 4215

Background Papers: None

1. Background

- 1.1 The proposal to create a code of practice tailored specifically for those Councillors/Officers who sit upon/support the Planning Committee has been previously discussed by members of both the Standards and Planning Committees. Members have suggested that given unique role that members of the Planning Committee have and the impact their decisions/actions can have upon residents of Trafford and private interests an additional Code of Practice would assist to provide clarity and to ensure that Members/Officers act appropriately.

2. **Proposed Planning Committee Code of Practice**

- 2.1 A number of possible codes of conduct were considered with the resulting Code of Practice (appendix 1) being drafted by the Director of Legal and Democratic Services with input from the Head of Planning and Development. It has been reviewed and amended by the Chairman of the Planning Committee who supports the proposed Code.
- 2.2 The Code was also considered by the Standards Committee at its meeting on 8 March 2017 and it has formally endorsed and welcomed the proposed Code.
- 2.3 The adoption of such Protocols provide greater clarity for Members and will reduce the risk of a decision being judicially reviewed, a complaint of maladministration being made to the Local Government Ombudsman, a complaint against a Member personally.
- 2.4 The proposed Code of Practice covers the following areas;
- General Roles, Responsibilities and Conduct
 - Planning Committee Meetings
 - Administrative Arrangements
 - Pre-Application Discussions
 - Lobbying of Members of the Planning Committee
 - Planning Applications Submitted by Members and Officers
 - Planning Applications Submitted by the Council
 - Conduct and Procedure of Planning Committee Meetings
 - Conduct
 - Procedure
 - Planning Committee Decisions Contrary to Officer Recommendation
 - Appeals against Council Decisions
 - Member Training
 - Review of Decisions
- 2.5 Once agreed by both the Standards and Planning Committees and Full Council the Code of Practice will be added to the Council's Constitution. This will also make the Code of Practice available to members of the public enabling them to consult the Code regarding a planning application.



PLANNING AND DEVELOPMENT
MANAGEMENT COMMITTEE
CODE OF PRACTICE

May 2017

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1. Introduction

1.1 This Code of Practice is intended to guide the procedures by which Members and Officers of the Council deal with planning matters, and to set standards of probity and conduct which the residents of Trafford Council can expect. In this document all references to 'Planning Committee' should be taken to refer to the Planning and Development Management Committee or any successor body.

1.2 As planning affects people's lives and private interests, it can often be very contentious. It is important that residents of Trafford and applicants for planning permission understand the system, have confidence in its integrity and transparency and that Members and Officers involved in the planning process avoid impropriety or even the suspicion of impropriety.

1.3 Members must follow the Codes and Protocols in the Constitution of Trafford Council which cover such matters as declarations of interests, gifts and hospitality and the Protocol for Member/Officer relations. When dealing with planning matters they must also act in accordance with this Planning Code of Practice.

1.4 A breach of these codes, whilst not usually amounting to a breach of criminal law, may adversely affect the standing of the Council. It could result in a decision being judicially reviewed, or in a complaint of maladministration being made to the Local Government Ombudsman. A breach of the Members' Code of Conduct can result in a complaint against a Member personally.

1.5 If Members or Officers are in doubt about the application of the Codes they should seek advice from the Council's Monitoring Officer.

2. General Roles, Responsibilities and Conduct

2.1 Members and Officers have different but complementary roles in the planning process. Members of the Planning Committee have different roles to those of other Councillors.

Members of Planning Committee

2.2 There are 13 Members on the Planning Committee and they normally meet once a month.

2.3 Members of the Committee are appointed at the Council's Annual General Meeting, held in May each year.

2.4 Four Members of the Committee constitute a Quorum.

2.5 Councillors who are Members of the Planning Committee are responsible for the determination of planning applications. The Committee must assess proposals against the development plan and all other material considerations and carefully balance the benefits of proposed development with any adverse consequences. Members are required to consider all planning proposals in the wider public interest. Decisions are restricted to planning considerations, and cannot seek to control non-planning issues or duplicate other legislative controls. Decisions made by the Committee must be lawful.

2.6 Councillors who are not members of Planning Committee can 'call in' applications, within geographical limits, thus requiring them to be considered by the Committee where the applications would otherwise be delegated to officers under the Scheme of Delegation. However, such requests must be supported by clear planning reasons why the case requires consideration by the Committee. The Chairman of the Committee can call in any application to the Committee without geographical

limit, but is still required to provide clear planning reasons. Members shall not put any pressure on Officers to make particular recommendations or decisions, nor to change recommendations or decisions in respect of any application. However, it is helpful if Members explain their concerns in relation to any application which they have called in with the case officer in advance of the Committee meeting.

Planning Committee Members shall:-

2.7 For and in meetings:-

- Exercise personal responsibility in deciding whether to declare any personal interest as defined in the Council's Code of Conduct in relation to any planning application that is before the Planning Committee for determination, and withdraw, if so required by the Code. If in doubt, Members shall consult and seek guidance from the Monitoring Officer in advance of the meeting.
- Act fairly and openly.
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality. Whilst Planning Committee Members have a responsibility to their constituents, the decisions of that Committee must be based on the Development Plan and all other material planning considerations.
- Have reasons and justification for their position and resolutions (this is a requirement of the Code of Conduct)

2.8 Planning Committee Members also have a personal responsibility to declare a personal or pecuniary interest as defined in the Council's Code of Conduct in any planning application so it can properly be brought before the Committee under the Council's Scheme of Delegation.

Non Planning Committee Members of the Council

2.9 Ward Councillors who do not sit on the Planning Committee will be allowed to speak at Planning Committee at the Chairman's discretion. This opportunity shall not apply to delegated items unless they are referred to Planning Committee for determination in accordance with the operation of the scheme of delegation and call in arrangements.

2.10 Applications to be placed before the Planning Committee will be scheduled for the first available meeting. Applications will not be deferred to later Committee meetings on the grounds that an interested Member is unavailable to attend the scheduled meeting

2.11 Ward Members should exercise personal responsibility in declaring an interest in planning applications where they are for example, affected by, are related to the applicant, or would have a pecuniary interest in, the proposals, so that it can properly be brought before the Committee under the Council's Scheme of Delegation. The weekly lists of planning applications are sent to all Members. If a Member receives a standard neighbour consultation letter from the Planning Service at their home address they should declare an interest. If in doubt, Members shall consult and seek guidance from the Monitoring Officer.

3. Planning Committee Meetings

3.1 Meetings of the Planning Committee will normally be held on the second Thursday of each month. Dates for Committee meetings can be found on the Council's website.

3.2 All meetings will be held in public. However the public will be excluded from meetings whenever it is likely in view of the nature of the item to be discussed or the nature of the proceedings, that confidential information would be disclosed.

3.3 Public speaking items will be taken first on the agenda. All other applications will be heard in the order in which they appear on the Agenda, other than in exceptional circumstances, and always at the discretion of the Chairman. The procedure at the Planning Committee meetings is explained in paragraph 9 of this Code of Practice.

3.4 The deadline to register for public speaking is 4.00pm on the day preceding the Planning Committee meeting.

Webcasting / Broadcasting of Meetings

3.5 The Council has no arrangements in place for the webcasting/broadcasting of Committee meetings. Members of the public wishing to film or record Committee meetings will need to agree arrangements in advance of the meeting with the Council's Democratic services team to ensure that the arrangements are compliant with the Council's obligations under the Data Protection Act 1998 and the Human Rights Act 1998.

3.6 The Chairman of the meeting has the discretion to terminate or suspend filming, if in the opinion of the Chairman continuing to do so would prejudice the proceedings of the meeting or if the Chairman, on advice, considers that continued filming might infringe the rights of any individual.

Content of Ward Councillor Speeches

3.7 Comments by Ward Councillors should be limited to relevant planning issues.

These include:-

- Relevant national and local planning policies;
- Appearance and character of the development, layout and density;
- Traffic generation, highway safety and parking/servicing;
- Overshadowing, overlooking, noise disturbance, odours or other loss of amenity.

Ward Councillors should avoid referring to matters outside the remit of the Planning Committee, such as:

- Boundary disputes, covenants and other property rights;
- Personal remarks [e.g. applicant's motives or actions to date];
- Rights to views or devaluation of property.
- Competition between businesses/services
- Issues covered by other legislation e.g. Environmental Health

Officers

3.8 The function of Officers is to support and facilitate the Councillors in their work and to ensure that robust and lawful decisions are made. Planning decisions must be made in accordance with the Development Plan and other material planning considerations.

3.9 The Head of Planning and Development makes decisions on the majority of planning applications under delegated powers and makes recommendations on more significant and contentious

applications and other planning matters for decision by the Planning Committee. Officers will provide professional advice and will provide Members with a recommendation on whether or not planning permission should be granted, based on the Officer's assessment.

3.10 In considering applications and in advising members of the public on planning policy, the determination of planning applications, enforcement and other planning matters, Officers must:-

- Act fairly and openly and avoid any actions that would give rise to an impression of bias
- Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties
- Approach each planning application or issue with an open mind, avoiding preconceived ideas
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions and recommendations purely on planning grounds having regard to the Development Plan and other material considerations
- Give professional, objective and consistent advice
- Carry out the decisions of the Committee insofar as they relate to the completion of any legal agreement, amendment to the officer recommendation e.g. the imposition of additional planning conditions..

4. Administrative Arrangements

Planning Application Notification

4.1 All Members of the Council will be informed of the submission of all planning and related applications through the weekly list of applications published on the Council's website. This list will include basic details about the application. Further detail on the application, including relevant plans and documents, can be viewed on the Council's website.

Meetings with Applicants and Objectors

4.2 The Local Planning Authority does not organise public meetings in respect of any application. The statutory planning process which includes a procedure for notifying occupiers of land neighbouring an application site provides the opportunity for the public to make its views known about a proposal. In order to be taken into account in the final decision, all comments made by local residents and third parties must be made in writing (an email is sufficient). Representations comprise part of the public planning file and are published on the Council's website. Sensitive personal information is redacted but the name and address of the person making the representation is published.

5. Pre-Application Discussion and Enforcement Discussions

5.1 Local Planning Authorities are encouraged to enter into discussions and negotiations which can bring about improvements that can make an application acceptable, and thereby potentially speed up the planning process. Such pre-application discussions will normally take place at Officer level and Members shall wherever possible refer requests by applicants and third parties for such advice to Officers. If Members become involved in such discussions they should make it clear that their views are personal and provisional and they may wish to make a record of the discussion.

5.2 All Officers taking part in such discussions shall:-

- Identify the decision-making process applicable to the application or issue under discussion
- Make it clear that only personal professional and provisional views can be expressed that will not bind the Council (Officers or Members) to reach a particular decision when determining the application
- Express views in the context of the Development Plan and other material planning considerations
- Be consistent in interpreting planning policies and Government guidance
- Where appropriate, advise applicants, neighbours and objectors on procedural matters.

6. Lobbying of Members of the Planning Committee

6.1 Lobbying is the process by which applicants, agents, neighbours, non-Planning Committee Members and other interested parties may seek to persuade Members of the Planning Committee to come to a particular decision. It is legitimate for them to approach Members of the Planning Committee (in person or in writing) and such discussions may help Members to understand the issues and concerns. As stated in the Nolan Committee Third Report “it is essential for the proper operation of the planning system that local concerns are adequately ventilated”.

6.2 In responding to approaches of this kind, Planning Committee Members may publicly express an opinion provided that they keep an open mind at Planning Committee meetings and must not have closed their mind prior to hearing all the evidence and arguments which will be presented at the Planning Committee. They should explain their position in respect of probity if they express an opinion on a proposal before consideration at the Planning Committee. They should:-

- Explain the procedures by which representations can be made;
- Indicate that a decision will be taken only when all relevant planning considerations have been taken into account
- Explain the kinds of planning issues that the Council can take into account;
- Direct the public to report issues raised to the Officers so that their views can be considered. It is helpful if this takes place in advance of the Planning Committee meeting so that all relevant issues are fully considered before the agenda is published.

7. Planning Applications Submitted by Members and Officers

7.1 Any application

- made by any Elected Member of the Council; or
- made by an Officer of the Council; or
- in respect of which an Elected Member of the Council has been consulted as a neighbour; or
- in respect of development by or on behalf of the Council (where a single representation or more has been made contrary to the officer recommendation);

shall be determined by the Planning Committee.

7.2 In respect of any such application any affected Member or Officer must declare the existence and nature of the interest or relationship in accordance with the appropriate Code of Conduct and

withdraw from involvement in the decision. The affected Officer shall take no part in the processing of the application and any recommendations made to Planning Committee.

8. Planning Applications Submitted by the Council

8.1 It is essential that the Council treats applications for its own development (or a development involving the Council and another party) in the same manner as all other applications and that this is seen to be the case.

9. Conduct and Procedure of Planning Committee Meetings

Officers' Reports to the Planning Committee

9.1 All planning matters considered by the Planning Committee will be the subject of appropriate written reports by the Head of Planning and Development incorporating his/her recommendations. Such reports shall be comprehensive but succinct in setting out the key planning issues to be considered in terms of the provisions of the Development Plan and other material planning considerations, the substance of any representations received and any planning history

Consideration of Planning Applications:-

9.2 Planning applications will be considered in the following manner:

a) Members will receive an additional information report outlining any late correspondence received on an application since publication of the agenda. This addendum must be considered by the Committee prior to making its decision on the application.

b) Public speaking:

Those who have made requests to speak in accordance with the relevant Protocol will be invited to speak in the following order:

- Objector (3 minutes)
- Supporter (3 minutes)
- Where the Chairman considers that wider debate is necessary e.g for Major Applications, the number of speakers for and against the Application and time allocated to speak will be at his/her discretion.

c) Other Elected Members of Council who the Chairman has given permission to speak. Ward Members for the ward in which the development is located will normally be allowed to speak for 5 minutes each but the length of time granted for other interested Members to speak will be at the discretion of the Chairman.

Once all speakers have made their representations concerning an Application, they will not be allowed to enter into debate with the Committee, unless invited to do so by the Chairman.

d) The Planning Officer will respond as necessary.

e) The Chairman will then open the debate by providing an opportunity for members of the Planning Committee to comment or ask questions of the Planning Officer or any other officer in attendance. The Planning Officer or others will be provided with the opportunity to respond.

f) When a Member of the Committee wishes to speak, he or she will indicate this to the Chairman. No Member will speak unless called upon to do so by the Chairman. When called upon to speak, the Member will address the meeting through the Chairman. If two or more Members wish to speak the Chairman will ask one to speak and the other(s) will remain silent. While a Member is speaking, other Members will remain silent until invited to speak by the Chairman.

g) When the Chairman considers all Members have had an opportunity to contribute he or she will take a vote on motions for or against the proposal which have been moved during the debate in the order in which they were proposed and seconded. If the motion is to do something other than agree the Officer recommendation set out in the report before Committee, planning reasons should be given at that time and before taking the vote.

h) The application will be determined by a simple majority vote by show of hands. All Members of the Committee, including the Chairman, should cast a vote in favour or against the motion before the Committee. As Planning Committee is appointed for the purpose of making decisions on planning applications, it is not appropriate for Members to abstain.

i) If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. The Chairman can only use a second or casting vote if he or she has participated in the original vote.

j) Following the vote, if the matter has been resolved. There must be no further discussion on the matter.

k) If the Committee makes a different decision to that recommended by the Head of Planning and Development, it must articulate and record in the minute the relevant planning reasons:

- If an application is refused against Officer recommendation, the Committee must provide the planning reasons for refusing planning permission
- If an application is granted against Officer recommendation, the Committee must suggest any conditions that it thinks should be imposed and the reason for those conditions
- Officers can be called upon to assist (e.g. suggest appropriate standard conditions) but cannot give reasons, only interpret the Committee's expressed views.
- The imposition of suitable planning conditions may be deferred and delegated to the Head of Planning and Development if it is not possible to deal with this comprehensively at the Committee.

9.3 Following the Planning Committee meeting, the Head of Planning and Development will produce a Decision Notice reflecting the Committee's decision on the application. This will be sent to the applicant/agent and published on the Council's website

N.B. If a Member joins a Planning Committee meeting after the presentation of an item has begun, then the Member should not take part in the debate or vote on that item.

10. Conduct

10.1 The Chairman of Planning Committee is responsible for the conduct of the meeting in accordance with the Rules of Procedure and for the effective delivery of business in a professional, courteous, transparent and timely manner. The Members of the Committee and Officers shall respect the role and behave in a manner that is commensurate with the high standards of conduct and propriety that are expected in public office.

10.2 The Chairman will seek to ensure that Members and Officers are treated in accordance with the Council's agreed Protocol on Member/Officer relations, with regard to:-

- The political neutrality of Officers
- The independence of Officers
- Mutual respect, courtesy, civility and professionalism with respect of differing views

10.3 Where disturbance of the meeting occurs by way of public interference, the Chairman may suspend proceedings until matters are resolved or in extreme situations may close the meeting to the public.

10.4 Please be aware that the Code of Conduct applies to all Members at all meetings of the Council, Laws relating to remarks made about individuals apply at all meetings of the Council, whether or not they are being recorded or broadcast

11. Procedure

11.1 The Chairman will ensure that the meetings of the Planning Committee are conducted in accordance with the Council's Rules of Procedure and safeguard that appropriate debate is able to take place in a structured and professional manner. The Chairman should seek to avoid repetition or irrelevant debate.

11.2 Appropriate Legal and Democratic Services Officers will be responsible for advising the Chairman and the Committee on matters of procedure and protocol.

11.3 Where Officers advise the Chairman of material planning concerns or potential consequences of a particular course of action, or any potential liabilities or errors of fact, Officers shall be afforded reasonable opportunity to concisely explain those matters to Planning Committee before it reaches a decision.

12. Planning Committee Decisions Contrary to Officer Recommendation

12.1 From time to time the Committee will disagree with professional advice given by the Officers and may decide to determine an application contrary to that advice. When this occurs the Chairman of Planning Committee will ensure that the following principles are followed:-

- Members shall clearly express the planning reasons for their decision and these will be recorded in the minutes.
- A Member proposing refusal of an application for which the Officer recommendation is approval shall state his/her reasons prior to the vote being taken.

13. Appeals against Council Decisions

13.1 Officers will organise and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances (such as where specialist evidence is required) it may be necessary to appoint Consultants to appear for the Council.

13.2 In giving evidence, Officers will present the best possible case on behalf of the Council while complying with the Royal Town Planning Institute (“RTPI”) Code of Professional Conduct. This Code requires that Planning Officers who are members of the Institute do not make statements purporting to be their own, but which are contrary to their bona fide professional opinion.

13.3 Members can have an important role to play in appeals and may, within set deadlines, make written representations to the Inspector and may also appear at informal hearings or as a witness at public local inquiries. In doing so they should state whether they are acting in their local Councillor capacity or, representing the Council’s case.

13.4 Where Planning Officers are unable to defend decisions on appeal (due to requirements of the professional conduct rules of the RTPI) the Planning Committee should be aware of this before the final vote is taken. In such cases it may be appropriate for Members of the Committee to attend any subsequent appeal hearing, and if necessary, to give evidence in support of the Council’s decision.

13.5 Planning and Legal Officers will support Members attending or wishing to make representation at appeals and advise them on preparing and delivering evidence. Legal Officers will attend inquiries or assist in preparing representations when legal representation is required.

13.6 Planning decisions are decisions made by the Council. It is therefore not normally appropriate for an elected Member to support an appellant at Appeal. If Members have concerns about delegated applications, the appropriate course of action is to call in the application to Planning Committee for determination.

14. Member Training

14.1 Members of Planning Committee should undertake training which, on occasions, should be offered to all Members of the Council.

14.2 Members will be offered and required to attend core (compulsory) training (normally within three months of appointment to the Committee). This training will cover planning procedures, code of conduct and other subjects determined from time to time by Officers in consultation with the Chairman.

14.3 Attendance at training events will be recorded and published and monitored.

15. Review of Decisions

15.1 The Audit Commission’s report “Building Quality” recommends that Councillors should visit a sample of implemented planning permissions to assess the quality of decisions. The purpose of such a review is not to change decisions, but to assess and improve the quality and consistency of decisions and thereby strengthen public confidence and assist in reviewing planning policy.

15.2 The Planning Committee will undertake an annual review of a sample of planning decisions made by the Committee. The review will include examples from a range of development types and, where it is considered appropriate and beneficial, include visits to sites.

15.3 The Planning Committee will consider the results of the review and decide whether it gives rise to the need for new policies, procedures and practices.

15.4 The outcome of appeals against the decisions of the Council will be reported regularly to Planning Committee. The outcome of legal proceedings will also be reported regularly so that Planning Committee can review its own decision-making processes.