

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No. 9

meeting date: THURSDAY, 11 JANUARY 2018
 title: PROTOCOL FOR MEMBERS AND OFFICERS DEALING WITH
 DEVELOPMENT MANAGEMENT
 submitted by: MARSHAL SCOTT, CHIEF EXECUTIVE
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1 PURPOSE

1.1 To seek Member approval for revisions to the attached Planning Protocol.

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives } The Council aims to be a well-managed Council,
- Corporate Priorities } providing efficient services. Clear guidance supports
- Other Considerations } this objective.

2 BACKGROUND

2.1 In February 2017 Members approved the Protocol.

3 ISSUES

3.1 The current Protocol was considered by a Working Group which met in December 2016 and suggested various amendments to the Protocol. Since the Protocol was approved by Members' further areas have been identified where Members would benefit from clearer guidance namely:

1. receiving and giving professional advice, including from officers of other authorities eg Lancashire County Council;
2. circulation of documents, emails and additional information by Members at Committee and prior to Committee;
3. lobbying;
4. advice for Members speaking at Planning and Development Committee (ie not Members of the Committee).

3.2 Certain other administrative changes are proposed to improve the Protocol. The first proposal is to alter the Protocol's title to distinguish it more clearly from the Development Management Protocol – the latter having been in existence since 2005 and dealing mainly with the administration of applications eg validation requirements. The suggested new title of this document is Planning Protocol for Members.

3.3 Paragraph 5 has been updated to more accurately reflect the site visit rules.

- 3.4 7.5 has been removed as it duplicates an existing obligation, similarly 7.7, 7.8 and 7.9 have been amended to more closely reflect existing practice.
- 3.5 Members may be in agreement with the revisions, or wish to deal with the revisions via a Working Group as previously.
- 3.6 Additions or amendments to the protocol are underlined or cross hatched in the attached document at Appendix 1.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – N/A.
- Technical, Environmental and Legal – N/A.
- Political – N/A.
- Reputation – N/A.
- Equality & Diversity – N/A.

5 RECOMMENDED THAT COMMITTEE

- 5.1 Consider the amended Planning Protocol attached as Appendix 1 and approve the same; or
- 5.2 Request that the working group reconvene to review the proposed amendments.

DIANE RICE
HEAD OF LEGAL AND DEMOCRATIC SERVICES

MARSHAL SCOTT
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BACKGROUND PAPERS

None.

For further information please ask for Diane Rice, extension 4418

REF: DER/EL/P&D/110118



PLANNING PROTOCOL FOR MEMBERS

JANUARY 2018

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1 Introduction

- 1.1 This Protocol sets out the practices and procedures that Members and Officers of Ribble Valley Borough Council should follow when determining planning applications.

2 Basic Principles

- 2.1 The basis of the planning system is to manage development in the public interest.
- 2.2 Planning is often contentious because planning decisions affect the private interests of individuals, landowners and developers. It is not a precise science and requires informed judgement within a firm policy context. The planning system relies on ensuring that officers and members act in a way which is not only fair, but also is clearly seen to be so. The planning process must therefore involve open and transparent decision making. The process should leave no grounds for suggesting with any justification that a decision has been partial, biased, or not in any way well founded.
- 2.3 Members have a duty to represent their constituents, but also an overriding duty to the wider community. Whilst Planning Committee Members may be influenced by the opinions of others, their decisions must not discriminate in favour of any individual, group, company or locality, nor appear to do so. Decisions should be clearly based upon material planning considerations and professional advice.
- 2.4 The role of the planning officer is to advise and assist members in their determination of planning applications by providing impartial and professional advice. They will ensure that all the necessary information for a decision to be made is provided with a clear and accurate analysis of the issues including identifying relevant development plan policies and all other material considerations. All reports to Members will contain a clear recommendation.
- 2.5 Members may raise with the relevant officers any points that they consider to be of relevance to the merits of a planning matter that the Council is to determine. However, Members should not otherwise seek to influence officers regarding particular officer recommendations. Members should also ensure that, in the event that contact is made with offices of another statutory body the contact is managed in accordance with that body's Officer Member Protocol and that Members do not seek to influence officers of other statutory bodies.
- 2.6 Planning applications submitted by the Council for its own development will be treated in the same way as those submitted by private developers, in terms of the assessment of material planning considerations, however all such applications will be referred to Committee.

3 Pre-application Discussions

- 3.1 Pre-application discussions between potential applicants and a Planning Officer can be of considerable benefit to both parties and should be encouraged. Such discussions will help to clarify what information should accompany the application and will usually reduce the time taken to make a decision.
- 3.2 It should always be made clear at the outset that the discussions will not bind the officer to make a particular recommendation, or the Council to make a particular decision and that any views expressed are personal and provisional. Advice should be consistent and based on the Local Development Plan and material considerations.
- 3.3 A written notice should be kept of potentially contentious meetings.
- 3.4 Members of the Committee need to preserve their role as impartial decision makers and generally should not give pre-application advice to applicants and/or agents regarding development proposals.
- (a) Members should only meet applicants if an officer (wherever possible the Head of Planning Services or a member of staff nominated by him) is present. A note should be taken of the meeting. The taking place of the meeting should be reported to the Committee.
 - (b) Wherever possible the note should be compiled by either a Committee Clerk or member of the Planning team.
 - (c) If an applicant or interested party makes an approach, members should agree to listen but are advised not to comment. If a comment is given it should be made clear that it is a personal view rather than that of the authority. Members should avoid giving any commitment, or the impression of a commitment that they hold any particular view on the proposed development. Exceptionally, where a member considers that he or she cannot avoid giving an opinion, this should be declared at Committee. If the approach is from a constituent, members may give information on policies and procedures. Requests for information from professional advisors or agents should be referred to officers.
 - (d) In order to preserve their role as impartial, Members should avoid circulating documents to Members of the Committee on behalf of the applicants or objectors.
 - (e) Members of the Committee or who attend to address Planning Committee but are not Members of the Committee should ensure that no new or additional information is given to Committee which has not first been supplied to the other party to the application.
- 3.5 Members should be aware of the opportunity for a potential applicant to take formal pre-application advice as set out at Appendix 1 & of the Council's

adopted Statement of Community Involvement: Section 4 (Involving the Community in Planning Applications) & Appendix 3 (Guidance for Developers on Consultation for Proposals)(available at https://www.ribblevalley.gov.uk/downloads/file/9588/sci_adopted_october_2013)

4 Lobbying

- 4.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a proposal will often seek to influence the decision by an approach to their local Member or to Members of the Planning Committee. However, such lobbying can lead to the impartiality and integrity of a member being called into question. The information provided by lobbyists may represent a selective and incomplete picture of the relevant considerations in respect of a planning matter.
- 4.2 Planning Committee Members are free to listen to any point of view about a planning proposal. Even though they may agree with a particular view, Members of the Committee should avoid expressing an opinion which may indicate they or the authority have reached a final conclusion on a planning application until all the relevant information, evidence and arguments have been put before them at Committee.
- 4.3 Ward Members who are also members of the Planning Committee may participate in the Committee debate on an application in their Ward and will normally be able to vote on the application. Whilst Ward Members may wish to ensure that a particular body of local opinion is heard by the Committee, and may reflect those views to the Committee, they should take care to avoid bias. Members of the Planning Committee need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in a transparently open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. A member may voice his or her concerns publicly before a meeting but he or she should make it clear that they will not form a final opinion until they have considered all the information.
- 4.4 If a member responds to lobbying by deciding to go public or on the record such as in the press or via social media, in support of a particular outcome; or even campaign actively for it; it will be very difficult for that member to argue convincingly that he/she has carefully weighted all the evidence and arguments presented at the committee meeting: In these circumstances the decision of the Planning Committee may be vulnerable to challenge by way of Judicial Review if there is bias or the appearance of bias in the process. An appearance of bias is created if Members make it plain that they have already made up their minds about an application and will not be influenced by

anything said at the meeting. In these circumstances the proper course of action would be for the member to make an open declaration and not to vote.

- 4.5 Being a Member of a Parish or Town Council that has expressed a view on an application does not prevent a Planning Committee Member reaching the same or a different view when the application is considered on its merits by the Council. However the Member should approach the decision making process afresh and not express a final view in advance of the Committee meeting or act as a mouthpiece for another Authority. To do so could give an appearance of bias.
- 4.6 Members should be aware of, and have regard to, guidance issued from time to time by the Planning Advisory Service in relation to this issue.

5 Site Visits

- 5.1 Collective/accompanied Members site visits shall only be held where the proposals are of such a nature that the Committee or Chairman of Planning Committee is confident that the value added by such a visit justifies the delay in the processing of the planning application.
- 5.2 Attendance at site visits is generally by invitation only – the prime purpose being for Council members themselves to fully understand the material planning considerations to be taken into account in determining the planning application.
- 5.3 All site visits should be carried out in accordance with the Council's rules relating to site visits set out at Appendix 2.
- 5.4 Individual site visits should be carried out in accordance with current PAS "Probity in Planning" guidance.
- 5.5 These requirements apply equally to site visits arranged with other statutory bodies.

6 Delegated Decisions

- 6.1 Delegation of appropriate powers and functions by Planning Committee to designated officers has long been regarded as an essential element for the delivery of an efficient planning service.
- 6.2 The Council's Scheme of Delegation and Development Management Protocol are set out at Appendix 3.

7 Committee Decisions

Committee Reports

- 7.1 Reports to Planning Committee will normally be available at least five working days prior to the meeting.

- 7.2 All applications submitted to the committee will have a full written report from officers including a reasoned assessment of the proposal, reference to relevant policies and a justified recommendation and analysis of available options. Reports will cover the substance of any objections and the views of people and bodies that have been consulted.
- 7.3 Any oral presentations raising new matters and updates by officers to the committee will be minuted.
- 7.4 Members should ensure that they are present for the whole presentation by officers and subsequent debate on a particular matter and do not attend or leave part way through. This is to ensure that they are able to hear all the relevant evidence and debate in relation to a proposal. In the event that members are not present for the whole of that process and miss a substantial proportion of it they should consider whether they are in a position to vote. The Chairman will be able to offer advice on this point.
- ~~7.5 If the report's recommendation is contrary to the provisions of the Local Development Plan, the material considerations that justify this must be clearly stated.~~
- 7.6 Where an application is recommended for refusal the reasons will be set out in full in the officer's report.

Decisions contrary to officer recommendation

- 7.7 Members must indicate reasons at Committee for approval or refusal of applications determined contrary to officer advice, including identifying relevant policies. Pressure should never be put on Officers to "go away & sort out planning reasons".
- 7.8 Where Members are minded to approve an application contrary to officer advice, the application will be deferred to a future meeting of committee when it will be reconsidered with properly drafted conditions forming part of the full report, which will also include details of the original recommendation if appropriate.
- 7.9 Where an application is being considered at Committee for refusal contrary to officer advice, the proposed reasons for refusal will be agreed at that committee meeting. The reasons will be recorded in the minutes & be based on material planning considerations and the relevant policies supporting the refusal. An opportunity will be given to the officer to explain the implications of the contrary decision. The matter will then be deferred to a future meeting of Committee when it will be reconsidered with properly drafted reasons for refusal showing part of the full report, which will also include details of the original recommendation if appropriate. If a successful planning appeal follows a refusal contrary to officer advice, clear identification of good reasons for refusal will reduce the chance of a costs award.

Free from political instruction

- 7.10 Members of the committee must make planning decisions on planning grounds. “Whipping” is inappropriate and decisions should not be taken in party groups on how to vote on particular applications prior to the committee meeting.

Declaration of interests

- 7.11 The Council’s Code of Conduct sets out requirements for members on declaring pecuniary and non-pecuniary interests and the consequences of having such an interest. These must be followed scrupulously and Members should review their situation regularly. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.
- 7.12 A Member with a pecuniary interest in respect of a particular planning matter must declare it and take no part in the discussion or the determination of the proposal. He or she should leave the room before the item is considered. The responsibility for this rests with each Member. Advice can be obtained from the Head of Legal and Democratic Services if required, in advance of a Committee meeting. Guidance is also contained in Standing Order No. 30 in relation to non-pecuniary interests. It is unsatisfactory if a member asks for guidance in the course of a debate.

Requests by Members for information

- 7.13 Wherever possible, Members should give advance notice of additional information they intend to request, or information they intend to contest, at the committee meeting so that officers can be in a position to assist and avoid the unnecessary deferral of a decision.

Public Participation

- 7.14 In order to give greater opportunity to applicants and objectors to express their respective points of view, the Planning Committee operates a scheme of public participation, details of which are set out at Appendix 4.

8. Issue of Decisions

- 8.1 Where an application is approved or refused by Committee the planning permission or notice of refusal will normally be posted to the applicant within 48 hours of the date of the Committee Meeting.
- 8.2 Where application is approved subject to a legal agreement, the decision notice will not be issued until the agreement has been completed.

9 Member Training

- 9.1 Members of the Planning Committee will receive regular training about the planning system.