

**BROMSGROVE DISTRICT COUNCIL**

**PLANNING COMMITTEE**

**28TH MARCH 2011**

**CONSTITUTIONAL AMENDMENT AND PROPOSED MEMBER PROTOCOL  
FOR INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS FOR PROPOSED  
DEVELOPMENTS IN THE DISTRICT**

Relevant Portfolio Holder	Councillor Mrs. J. Dyer M.B.E.
Relevant Head of Service	Head of Planning and Regeneration Services
Non-Key Decision	

**1. Summary of Proposals**

To adopt a protocol for the engagement of Members in pre-application planning discussions and to provide a clarity and fairness to the process, making it accountable. This would enable the Council operate in line with current good practice advice.

**2. Recommendations**

**That Members recommend to Council:**

- 1) That the Member Protocol for Involvement in Pre-Application Discussions for Proposed Development as set out at Appendix 1 be approved and be implemented from 01 October 2011;**
- 2) That any Member wishing to become involved in Pre-Application Discussions under the Member Protocol must have completed the appropriate training;**
- 3) That the implementation of the protocol be reviewed jointly by Officers and Members 12 months after it is implemented;**
- 4) That delegated authority be granted to the Head of Legal and Democratic Services to make the consequential amendments to the Council's constitution.**

**3. BACKGROUND**

- 3.1 Pre-application discussions are generally carried out between Officers and agents acting on behalf of developers/landowners etc. The discussions relate to the specific site and development proposal in question, and seek advice (given without prejudice to the outcome of any subsequently submitted application) on the planning framework for the site, the likely acceptable uses, styles, designs etc for the site and the likelihood of gaining a favourable Officer recommendation on any future application.

- 3.2 Members of the Council are currently not involved in these pre-application discussions, however pre-application discussions without Members is normal practice.
- 3.3 The pre-application process allows for detailed matters such as design features and planning obligation requirements to be discussed and negotiated outside the time constraints of a submitted planning application, and for proposals to be re-designed, amended or altered in order to arrive at what Officers perceive being the best possible solution for the site in the circumstances. Such discussions are led for the Council by the Development Control Case Officer, and usually there is a single point of contact in the planning agent for the developer, although other personnel are involved on both sides as appropriate. From a Council perspective, this can include colleagues from teams such as legal, leisure, environmental health and others, as well as County Council colleagues.
- 3.4 The information required in order to respond to requests for pre-application advice, and an indication of the service that this Council provides, can be found in the fees and charges leaflet available on the Council website. This is as agreed by Members at Cabinet in April 2009.
- 3.5 Good practice guidance states that more should be achieved at the pre-application stage of the planning process. Initially, this related to large scale major developments, but as time has progressed it has begun to encompass much smaller schemes too, as well as controversial or unusual proposals.
- 3.6 Guidance includes a drive towards more and better community involvement, especially early on in the process, and the inclusion of Members as community representatives. Member engagement in the pre-application stage of the planning process has generally been cautioned or avoided in the past, however the more recent guidance suggests that this view should be revisited and reconsidered as part of the engagement of people within the planning process at all levels and stages.
- 3.7 There may be some concern amongst some Members about the lack of involvement in and knowledge of the process of shaping their places, communities and spaces, at the pre-application stage. This includes concerns about lack of Member involvement in negotiations for Planning Obligation requirements.
- 3.8 There has also been a general concern amongst Members and planners relating to the perceived role of Members in the process, their matters of

Interest and prejudice, especially when Members sit on a determining committee such as Planning Committee.

- 3.9 Developers and those acting on their behalf have also often expressed concern that even where they have engaged with Officers on a proposed development, if there has been no Member involvement there is a possibility that their proposals might be thwarted at the seemingly final hurdle of the Planning Committee meeting, once time and money has been put into the process of designing a proposal. Often in such cases, issues are raised by Members that could easily have been resolved if identified early in the process. It is in response to these issues that this report has been compiled.

**4. KEY ISSUES**

Transparency and clarity in terms of process

- 4.1 It is important that if Members are to become more involved in the pre-application process, there is a clear framework for such involvement, so that there is accountability and fairness built in. This is necessary for all parties to the process, be they professionals, Officers, Members or other interested parties. The conduct of all those involved must also adhere to appropriate guidelines in order that the later stages of the process are not prejudiced.
- 4.2 It is intended that any protocol that is adopted would be for use by all Members, regardless of which ward they represent or on which committees they sit. It is also recommended that if a protocol is adopted, the Head of Planning and Regeneration Services arrange for a training session for Members and Officers to ensure that the process is clearly understood and to answer any Member queries. It is suggested by Officers that such training would be a necessary prerequisite to Member involvement in pre-application discussions.
- 4.3 Guidance for Members engaging in pre-application discussions is available in a number of sources, and the documents noted at section 5 of appendix 1 are useful to refer to. In particular, reference could be made to 'Positive Engagement', which includes some handy hints and tips for Councillors.

Proposed document for adoption

- 4.4 The protocol to be found at Appendix 1 is proposed for adoption and subsequent implementation by Members and Officers. Its adoption would result in it being included in the Constitution's associated documents, as a matter of public record. The Protocol contains guidance on Member conduct.

- 4.5 Section 1 of Appendix 1 details the proposed criteria for Member involvement in pre-application discussions, which would be used to determine whether an enquiry is one where Members should be involved in discussions. This criteria allows for Member involvement in a significant number of applications. However, to continue to have a manageable process it is pointed out that the threshold for Member involvement and other issues will need to be reviewed after the system has been running for 12 months. This is covered by Recommendation 3 of this report.
- 4.6 Section 2 of Appendix 1 sets out a stage by stage procedure giving a sequence of events to be followed when requests for pre-application advice are received, in order that they can be dealt with consistently and fairly. Section 2 points out that pre-application meetings cannot be arranged around the availability of Members because of deadlines and the needs of applicants who are paying for the Service.
- 4.7 If a Member is approached for pre-application advice, then the contact details should be passed to the Development Control Manager for the enquiry to be dealt with as appropriate. Otherwise, enquiries will reach the Development Control team directly for processing.
- 4.8 When the Development Control Case Officer receives a case, they will validate the proposal and will then identify parties to be involved in discussions.
- 4.9 Section 3 of Appendix 1 provides the key information for Members regarding the process, and how to engage within it. At Section 4 of Appendix 1, a list of reference material can also be found. Section 4 of Appendix 1 refers to useful reading.

**Timescales for implementation and review and training**

- 4.11 In view of the need for training, it is proposed at this stage that the new protocol comes into effect on 3rd October 2011. All members wishing to participate in pre-application discussions under the new protocol will have to have undergone the appropriate training.
- 4.12 It is suggested that the protocol be implemented for an initial trial period, and that it is then reviewed after 12 months, in order to allow for ongoing monitoring and improvement. The protocol will be incorporated into the Council's constitution.

**5. FINANCIAL IMPLICATIONS**

Minimal additional resources would be required as the proposed procedures are an extension of the current Officer practice. These can be absorbed from within the existing budgets.

**6. LEGAL IMPLICATIONS**

The proposals fall within the following legislative framework:

Town & Country Planning Act 1990 (as amended)  
Planning & Compensation Act 1991 (as amended)  
Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

There are no significant legal implications arising from the introduction of the of the member protocol; as stated in the main body of the report the adoption of the new protocol will bring the Council into line with recognised good practice. Pre-application discussions with developers are not binding in terms of the final decision which will continue to be taken under the above legislation by either officers or Members as appropriate.

**7. POLICY IMPLICATIONS**

The Constitution would be altered and the protocol would be adopted as formal Council procedural policy, and would complement rather than conflict with any existing policy.

**8. COUNCIL OBJECTIVES**

- 8.1 The protocol would assist in the implementation of the One Community objective and priority of the Council by ensuring Members, as representatives of the local area, feed their comments in to the process at the earliest opportunity. The protocol would also support the environment and improvement objective by virtue of enhancing development proposals at the beginning of the design process.

**9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

- 9.1 Providing that all advice to Members enshrined within the Constitution and Code of Conduct are adhered to, there are no additional risks perceived. Indeed the process could be improved by having Member involvement at an earlier stage.

Pre-application discussions include sustainability and environmental issues.

**10. CUSTOMER IMPLICATIONS**

10.1 Users of the pre-application advice service will welcome the broadening out of the parties involved in the process. It will enable the widest audience to express its views about a development proposal at a time of greatest flexibility from the developer's point of view. This will in turn add an element of increased confidence in the process when moving forward to the submission of a scheme.

10.2 The associated fees and charges leaflet which sets out the service customers can expect would require amendment to include the involvement of Members with respect to the sections relating to; benefits of the service, what happens next and the general information.

**11. EQUALITIES AND DIVERSITY IMPLICATIONS**

11.1 Elected Members in their role as community spokespeople would add value to the pre-application process with respect to the issues of equalities and diversity and where material to the submission, this could result in improvements in the relationship between the built environment and its local context.

**12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT**

12.1 A thorough understanding of all relevant issues at the outset will be beneficial to both developer and the Council with respect to the efficient use of Officer and Member time. This protocol will assist in supporting this objective. There are no procurement or asset management consequences.

**13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY**

13.1 It is established that the benefits of the pre-application process include the front loading of matters such as climate change and biodiversity. These benefits will not be reduced as a result of this protocol.

**14. HUMAN RESOURCES IMPLICATIONS**

14.1 There are no additional HR implications as the minor alterations to back office systems that can be met from existing resources.

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**15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

15.1 Training for Members will be a prerequisite of their involvement in the pre-application process and this will fully address the issue of Member conduct.

**16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998**

16.1 The impact of a development on crime and disorder is a material planning consideration to be taken into account in the determination of any proposal.

**17. HEALTH INEQUALITIES IMPLICATIONS**

17.1 None.

**18. LESSONS LEARNT**

This is a new procedure which follows the advice and case studies of others. Therefore, whilst learning some lessons others will come from the proposed review, after which the protocol can be evaluated and changed if it is considered necessary.

**19. COMMUNITY AND STAKEHOLDER ENGAGEMENT**

19.1 The potential for Members to discharge their community function by becoming involved in pre-application discussions was advocated through the Spatial Planning Peer Review of October 2009. As part of that process the views of stakeholders and customers were sort and the associated Action Plan reflects this fact.

**20. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	Yes at CMT
Executive Director (S151 Officer)	Yes at CMT
Executive Director – Leisure, Cultural, Environmental and Community Services	Yes at CMT
Executive Director – Planning & Regeneration, Regulatory and Housing Services	Yes at CMT

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Director of Policy, Performance and Partnerships	Yes at CMT
Head of Service	Yes
Head of Resources	Yes at CMT
Head of Legal, Equalities & Democratic Services	Yes at CMT
Corporate Procurement Team	Yes at CMT

**21. WARDS AFFECTED**

All.

**22. APPENDICES**

Appendix 1 - Proposed document for inclusion as a Constitution Associated Document.

**23. BACKGROUND PAPERS**

See reference list at Section 4 of Appendix 1

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