

BROMSGROVE DISTRICT COUNCIL

CABINET

7th NOVEMBER 2012

MEMBER INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS

Relevant Portfolio Holder	Councillor Kit Taylor
Portfolio Holder Consulted	Yes
Relevant Head of Service	Ruth Bamford
Wards Affected	All Wards
Ward Councillor Consulted	N/A
Key Decision No	

1. SUMMARY OF PROPOSALS

- 1.1 To adopt a revised protocol for the engagement of Members in pre-application discussions associated with planning applications.

2. RECOMMENDATIONS

2.1 That Members recommend to Council:

- 1) That the Member Protocol for involvement in pre-application discussions, in its amended form as set out at Appendix 1, be approved and be implemented from 1st January 2013;**
- 2) That any Member wishing to become involved in pre-application discussions under the Member protocol must have completed the appropriate training;**
- 3) That delegated authority be granted to the Head of Legal and Democratic Services to make the consequential amendments to the Council's constitution.**

3. KEY ISSUES

Background

- 3.1 Members approved a new policy to allow for member involvement in pre-application discussions at Full Council on 20th April 2011. Following a programme of training events the new protocol was implemented in October 2011.
- 3.2 At Full Council on 14th March 2012 Members decided to suspend the Pre-Application Protocol pending a review to be carried out by the Leader of the Council and the Leader of the Labour Group in conjunction with Officers and the Chairman. That review has now been completed.

Role of Leader and Planning Portfolio Holder

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- 3.3 Officers consider there to be many advantages to having member involvement in the pre- application process and are therefore keen to see the protocol reintroduced. Some of these advantages of this process are listed in para 3.2 of the previous report, found in Appendix 2. These advantages are also supported by the NNPF in paragraphs 188 – 195. Para 188 says *'Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community'*.
- 3.4 However it is considered appropriate to suggest one change to the protocol that was previously adopted, in that the Leader and the Portfolio Holder for Planning, Core Strategy and Regulatory Services should be invited to pre-application discussions that fall within the criteria in the protocol.
- 3.5 The reason for inviting the Leader and Portfolio Holder for Planning, Core Strategy and Regulatory Services as opposed to say the Planning Committee Chairman is to enable an overview of significant proposals affecting the District as a whole so that there is consistency of approach in negotiations and liaisons with developers. Matters that could be District wide include; provision of on/off site play space or commuted sums, the associated management of this area, highways matters, the interplay between planning applications and the implementation of the Core Strategy and to ensure appropriate regard is given to the balance to be struck between the protection of the green belt and economic prosperity.

Member Training

- 3.6 It is proposed to adopt a similar protocol to that previously introduced and that it be for 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 training sessions for Members and Officers to ensure that the process is clearly understood and to answer any Member questions. It is suggested by Officers that such training would be a necessary prerequisite to Member involvement in pre-application discussions.
- 3.7 In view of the need for training, it is proposed that the new protocol comes into effect on the 1st January 2013, with training offered in December 2012. All members wishing to participate in pre-application discussions under the new protocol will have to have undergone the appropriate training.

Constitutional Changes

3.8 Adoption of the amended protocol would result in change to the Constitution's associated documents, as a matter of public record and this requires an amendment to the constitution. The Protocol also contains guidance on Member conduct.

Financial Implications

3.9 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.

Legal Implications

3.10 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 re-introduction of the of the member protocol; as stated in the main body of the report the adoption of the 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.

Service / Operational Implications

3.11 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.

Customer / Equalities and Diversity Implications

3.12 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.

4. RISK MANAGEMENT

- 4.1 Provided 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.

5. APPENDICES

Appendix 1 – Revised protocol

Appendix 2 -Original Committee report from 2011 (considered by Planning Committee on 28th March 2011 and Full Council on 20th April 2011)

6. BACKGROUND PAPERS

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APPENDIX 1; REVISED PROTOCOL

**Member Protocol for Involvement in Pre-Application Discussions for
Proposed Developments**

Contents:

1. Criteria for Member involvement in pre-application discussions.
2. Protocol for Member engagement in pre-application discussions.
3. Guidance to Members on conduct.
4. List of references.

1. CRITERIA FOR MEMBER INVOLVEMENT IN PRE-APPLICATION PLANNING DISCUSSIONS

On sites where the following criteria apply, there will be an offer made to relevant Members of Bromsgrove District Council for involvement in pre-application discussions with Planning Officers in accordance with the protocol adopted by this Council, in accordance with the factors noted below:

Criteria for the site:

- 1) Major application;
RESIDENTIAL (i.e. 10 dwellings or more, or ½ a hectare or more)
or
NON RESIDENTIAL DEVELOPMENT (i.e. 1000 square metres or more of new floor space, or 1 hectare or more) or
- 2) Site allocated within adopted Local Plan as an ADR
- 3) Site allocated in emerging Core Strategy as a Development Site
- 4) Site known to be controversial (to Head of Planning & Regeneration or Development Control Manager) by virtue of its planning history or the nature of the development now proposed,
or
- 5) As directed by Chairman of Planning Committee or Planning Portfolio Holder, or
- 6) As directed by Head of Planning & Regeneration or Development Control Manager; or
- 7) At the request of a Member when reasons given in writing to Head of Planning & Regeneration or Development Control Manager.

In addition:

- Where criteria 2 or 3 apply, the Leader of the Council and the Portfolio Holder for Planning, Core Strategy and Regulatory Services will also be notified.
- Where criteria 7 applies, the Members' request should include any specific Members who they would like to be involved in discussions.

In general, where proposals fall below the thresholds noted above, Members will not be invited to participate in pre-application discussions.

Criteria for Members

Members will be notified by email with an associated link to the relevant documentation and invited to participate in discussions:

- Where any of the criteria above apply, all of the ward Members for the ward in which the site lies will be notified.
- If the site abuts a ward boundary, or if the site encompasses more than one ward, all ward Members for the adjacent ward/s shall also be notified and invited to participate in discussions. (Abuts is

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defined as where the red line of the application site, as drawn on
the submission, touches another ward boundary)

2. MEMBER PROTOCOL FOR INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS FOR PROPOSED DEVELOPMENTS IN THE DISTRICT

Either:

Officers receive pre-application enquiry and identify need for Member involvement (using criteria in Section One)

Or:

Members are approached and pass on enquiry to Development Control Manager. If they specifically wish to be involved in discussions, or wish other Members to be involved, this should be raised with the DC Manager at this stage

Then:

1. Development Control Manager allocates enquiry to an appropriate CASE OFFICER (CO)
2. CO validates pre-application submission and identifies and notifies all those who need to be involved in the discussion, having regard to criteria at Appendix
3. CO carries out site visit (it is recommended that Members to be involved in discussions also carry out a site visit. This should be co-coordinated with the case officer where ever possible)
4. CO arranges meeting between all relevant parties
5. CO chairs and records meeting, as well as coordinating relevant correspondence, responses, consultations etc.
8. Discussions continue, possibly supported by additional meetings until the developer is advised that it seems appropriate for a planning application to be submitted

3. GUIDANCE TO MEMBERS ON CONDUCT

Transparency and clarity in terms of process

1.1. 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 involved in 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.

1.2. 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 Development Control Manager and Head of Planning and Regeneration arrange for suitable training for Members and Officers to ensure that the process is clearly understood and to answer any Member queries.

1.3. Guidance for Members engaging in pre-application discussions is available in a number of sources, and the documents noted at section 5 are useful to refer to. In particular, reference could be made to 'Positive Engagement', which includes some handy hints and tips for Councillors.

Member participation and conduct

Always have an Officer present

1.4. In terms of Member involvement, guidance is required in terms of how they may participate in the process, and what they may make comments upon. It is generally acceptable that they be party to pre-application discussions, providing that they ensure that an appropriate Planning Officer accompanies them, and that notes of the meeting are retained on the correct file. It is advisable for the Case Officer involved to chair meetings and lead discussions, allowing all parties, including Members, to participate as appropriate to the discussion.

Only make relevant, appropriate comments

1.5. When attending such discussions, Members should be careful to comment only on procedural matters, and general principles of acceptable or unacceptable development types and styles. Members should be fully acquainted with the contents of the Development Plan, in order that comments relating to broad principles of development are in accordance with the aims and objectives of the plan. It is also helpful for Members to be aware of any specific local issues and/or concerns, in order that they can be fed into the process early on. These matters can then be taken into consideration by developers when designing development schemes, as well as all relevant policy issues raised by Members and/or Officers.

Avoid pre-disposition

1.6. Members should be careful to avoid comments relating to specific elements of a proposal, or to pass opinions on such things, especially if they are or could be Members of the Planning Committee that may subsequently determine a planning application for the proposed development.

Declare any prejudicial interests and do not participate

1.7. Members should be careful to declare at the outset of such discussions any interests that they may have, be it in relation to their capacity as ward member, or as a neighbour, or for other reasons. These should be documented on the file for future reference. Members should also be aware and take care of their comments in relation to both predisposition and pre-determination so as not to prejudice their position for the future.

Treat all discussions as confidential

1.8. Members should also have regard to the fact that pre-application planning discussions are always confidential (in order to preserve commercial confidentiality) and that information relating to proposed developments does not reach the public arena until either a planning application is submitted or the developers choose to engage the community in a consultation exercise. Therefore such matters should not be discussed openly or in public, and Officers will always take care to ensure that such records are kept in appropriate secure conditions.

Seek support from Officers if required

1.9. If in any doubt at any time regarding planning matters, Members should always contact the Head of Planning & Regeneration or the Development Control Manager to seek further advice and assistance. It is always recommended that Members enquire first, in order that constituents, developers or other parties are not misled at any stage in relation to the adopted processes and procedures adhered to by this Council. Members should also be aware that failure to comply with adopted procedures could leave them open to scrutiny if it becomes apparent later.

4. LIST OF REFERENCES

Killian-Pretty Review and government response thereto

<http://www.communities.gov.uk/publications/planningandbuilding/killianprettysummary>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/killianprettyresponse.pdf>

Constructive Talk – investing in pre-application discussions

<http://www.pas.gov.uk/pas/aio/39020>

Positive engagement in planning decisions

http://www.acses.org.uk/public_file/filename/12/positive_engagement_v4_2_.pdf

Councillor involvement in planning decisions

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/153569.pdf>

Bromsgrove District Council Statement of Community Involvement (SCI)

<http://www.bromsgrove.gov.uk/cms/environment-and-planning/planning/local-development-framework/community-involvement.aspx>

Open for business

<http://www.pas.gov.uk/pas/aio/41620>

Making your mind up – improving planning decision making

<http://www.pas.gov.uk/pas/aio/62452>

Probity in planning

ACSeS Model Members Planning Code

http://www.acses.org.uk/public_file/filename/8/ACSeS_Members_Planning_Code_update_draft_07_07.pdf

Public involvement in development control process – a good practice guide

<http://www.lga.gov.uk/lga/aio/114364>

Member Code of Conduct

Constitution

ATLAS Guidance Note: Implementing PPAs

<http://www.atlasplanning.com/lib/libDownload/351/080404%20PPA%20Guidance%20Web%20Download.pdf?CFID=246636&CFTOKEN=99816479>

Fees leaflet:: Your planning services: how to make contact and what to expect

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<http://www.bromsgrove.gov.uk/cms/environment-and-planning/planning/planning-advice-and-guidance.aspx>

Report to Cabinet April 2010 regarding fees and charges for planning functions