

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.

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

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

AUTHOR OF REPORT

Name: Helena Plant
E Mail: h.plant@bromsgrove.gov.uk
Tel: 01527 881335

APPENDIX 1

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) Large scale major application (i.e. 200+ dwellings or 4ha site or 10,000m²+ new floor area or 2ha+ site); or
- 2) Site allocated within adopted Local Plan as an ADR
- 3) Site allocated in emerging Core Strategy as a Development Site
- 4) Significant redevelopment opportunities in Town Centre, boundaries of which are defined by the Town Centre AAP
- 5) 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
- 6) As directed by Chairman of Planning Committee or Planning Portfolio Holder, or
- 7) As directed by Head of Planning & Regeneration or Development Control Manager; or
- 8) 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, 3 or 4 apply, the Chair and Vice-Chair of Planning Committee and the Leader of the Council will also be notified.
- Where criteria 8 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 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-ordinated 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/killianprettysresponse.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

<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

APPENDIX