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PURPOSE OF THE PROTOCOL

1. This protocol has been drafted by the Department of the Environment to assist the 11 new councils in setting up and running planning committees. This advice and guidance is not mandatory (although it does refer to a number of statutory requirements); rather it highlights what is considered to be best practice with regards to the operation of planning committees (following research in other jurisdictions). While councils have a degree of latitude in relation to how they will run their planning committees, it is important to ensure that planning decisions are taken, and are seen to be taken, in a fair and equitable manner, and that there is a degree of consistency across the 11 councils so that applicants are not faced with a variety of processes. Councils can decide to incorporate any or all of these recommendations into their standing orders / constitutions.

2. Councils should consider drawing up their own procedures to supplement this document; for example, expanding on public speaking rights, format of committee meetings, how to conduct site visits etc. Further advice and guidance may be requested from the Department, if considered necessary.

3. Councillors should refer, as necessary, to the mandatory Councillors’ Code of Conduct, guidance issued on the Code by the Commissioner for Complaints, and to any relevant advice and guidance issued by the Department in relation to planning.

REMIT OF THE PLANNING COMMITTEE

Development management

4. The main role of the planning committee is to consider applications made to the council as the local planning authority and decide whether or not they should be approved. In order to ensure that decisions are taken at the appropriate level, and in accordance with agreed timescales, it is strongly recommended that the decisions of the planning committee in determining applications made to the council should be taken under full delegated authority, meaning that the decisions of the committee will not go to the full council for ratification. However, if councils decide to retain the option of referring certain major applications to the full council for determination, it is recommended that these
should be restricted to applications which are significantly contrary to the local development plan or contentious cross-boundary applications.

**Development Plan**

5. Each council is required by section 8 of the Planning Act (NI) 2011 to prepare a plan for its district to be known as a plan strategy. The strategy must set out the council objectives in relation to the development land in its district, and its strategic policies for the implementation of those objectives. After the plan strategy has been adopted the council must then prepare a local policies plan. This will set out the council policy in relation to what type and scale of development is appropriate and where it should be located.

6. Both these documents comprise the local development plan. This plan forms the basis for public and private investment decisions, providing a degree of certainty as to how land will be developed. In law, planning applications should be determined in accordance with the development plan unless other material considerations indicate otherwise. This means that where land is zoned for a particular use, the planning committee should ensure it is reserved for that use: for example, an application for housing in an area zoned for housing should be approved unless the design and layout fails in terms of the environmental, open space and access standards, or its design and layout has a detrimental impact on the character of the area or neighbouring amenity.

7. The planning committee’s role in relation to the local development plan is to approve the local development plan before it is passed by resolution of the council. The planning committee should also ensure that the local development plan is monitored annually, particularly in terms of the availability of housing and economic development land, and that it is reviewed every five years, giving consideration to whether there is a need to change the plan strategy or the zonings, designations and policies as contained in the local policies plan.

**Development Plan Transition Arrangements**

8. Until such time as the council has adopted its plan strategy the council’s local development plan will be taken to be the extant Departmental development plan for that part of the council district.
9. When the council has adopted its plan strategy, the local development plan will be the council’s adopted plan strategy and the extant Departmental development plan read together. If there is a conflict between the council’s plan strategy and the extant Departmental development plan the conflict shall be settled in favour of the council’s adopted plan strategy.

10. When the council has adopted its local policies plan, the local development plan will be the council’s adopted plan strategy and local policy plan as defined in Section 6 of the 2011 Act.

SIZE OF COMMITTEE

11. A recent study\(^1\) carried out for the Welsh Government into the operation of planning committees in Wales found that there was no simple link between the size of a committee and its efficiency and effectiveness and that, in fact, the bigger committees often had lower attendance levels, greater inconsistency and cost more to operate. In addition, if all members of the council are on the planning committee there is less room for members to act as advocates for their constituents. It is strongly recommended, therefore, that a planning committee should consist of between 20% and 50% of council members (depending on the size of the council) and that there should be a quorum (e.g. 50% of committee members). Councils can decide whether substitute members are permitted. The Head of Planning would be expected to attend all planning committee meetings, in addition to the planning officers presenting their reports.

FREQUENCY OF MEETINGS

12. Councils are free to determine the frequency of their planning committee meetings, depending on their governance models and schemes of delegation.

ENFORCEMENT

13. It is strongly recommended that all enforcement activities are delegated to planning officers, who can use their professional judgement on what enforcement action to take, if any, to address alleged breaches of planning

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1 'Study into the Operation of Planning Committees in Wales' by Fortismere Associates with Arup (July 2013)
control as established by the council’s policies. Planning committees can be informed of progress on cases and can request a report from officers to the committee on any enforcement matter (but the committee should not take any decisions on enforcement action). In addition, planning officers should prepare a quarterly report on the progress of formal enforcement cases which should be circulated to all councillors, not just planning committee members (this could be in relation to the number of notices issued, convictions obtained etc. as opposed to individual cases).

14. Each council should prepare an enforcement strategy detailing how enforcement action will be dealt with, which should be agreed by the planning committee.

SCHEMES OF DELEGATION

15. Section 31 of the Planning Act (NI) 2011 requires each district council to introduce schemes of delegation. Schemes of delegation allow decision-making for local, generally non-contentious, applications to be delegated to a council’s planning officers to act on the council’s behalf in implementing its planning policies. The details of each delegation scheme, which will only relate to applications within the category of local developments, will be for individual district councils to determine (a scheme of delegation cannot include major or regionally significant applications). The Department will be issuing a separate Guidance Note on Schemes of Delegation.

16. This means that the majority of planning applications (and other consents such as listed buildings, advertisements etc.) should be determined by planning officers rather than by the direct consideration and vote of the planning committee; however, such decisions are still, legally, decisions by the council. The overall objective is to ensure that district council arrangements for decision-making on applications for local developments are efficient whilst ensuring that proposals that raise strong local views or sensitive issues for the local environment can still be dealt with directly by elected members.

17. There are certain statutory restrictions on which applications can be delegated to officers – the Planning (Development Management) Regulations (NI) 2015 state that an appointed officer cannot determine an application for planning
permission where the application is made by the council or an elected member of the council, or the application relates to land in which the council has an interest. Instead, these applications must be determined by the planning committee. Apart from these restrictions it will be up to an individual council to decide if it wishes to place any further restrictions on which applications can be delegated to planning officers - for example:

- applications made by a planning officer, senior officer of the council or a close relative or partner;
- applications which have an objection (or a number of objections); and / or
- an associated application is being determined by the planning committee.

REFERRAL OF DELEGATED APPLICATIONS TO THE PLANNING COMMITTEE

18. Delegation of planning applications to officers is seen as a critical factor affecting the overall performance of the development management process as it helps to ensure that decisions are taken at the most appropriate level, procedures are clear and transparent, costs are minimised and members have more time to concentrate on the more complex or more controversial cases. (It is recommended that, over time, councils should aim to have 90 – 95% of applications dealt with under delegated arrangements.) It is essential, however, that members have the opportunity to request, where they consider it appropriate, that an application, which would normally fall within the scheme of delegation, be referred to the planning committee for determination.

19. However, a balanced approach is necessary and councils should ensure that applications are not unnecessarily referred to the planning committee as this may result in delay to the processing of applications. The scheme of delegation should include a procedure, to be determined locally, whereby councillors are able to request that the planning committee consider a proposal. In addition, the Head of Planning can refer any matter which they consider suitable for determination by the planning committee. Members of the public should not be able directly to request that an application be referred to the planning committee. Any referral request must clearly specify the planning grounds on
which the request is being made to ensure that applications are not unduly delayed.

20. It is recommended that councils monitor the number of applications referred to the planning committee to ensure that only those that are significant or controversial are considered by the planning committee.

FORMAT OF PLANNING COMMITTEE MEETINGS

21. Councils are free to operate their planning committees in accordance with their own standing orders. The following recommendations and paragraphs are made to provide some advice and guidance to councils following research into best practice. It is recommended that:
   • the planning officer should prepare a weekly list that will indicate which applications are to be considered by the planning committee and which are to be determined by officers under delegated powers;
   • all planning committee members should be sent the agenda in advance of the meeting with a report on each application not delegated to officers;
   • officers should prepare an addendum on the day of the meeting to report any updates since the agenda was issued; and
   • the Chair should hold a briefing session with planning officers on each application to be considered in advance of the planning committee meeting.

22. The meeting is presided over by the Chair of the planning committee. Following the approval of the minutes of the previous meeting and apologies, councillors should declare any interests they have on the agenda items, which should be recorded in the minutes of the meeting. The councillor must leave the meeting for that item.

23. The report prepared and presented by the case officer makes a recommendation on whether the application should be approved, approved with conditions or refused. Plans and photographs may be shown. After the planning officer presents the report members have an opportunity to listen to speakers, ask questions of the officer and debate the case. The planning
committee then discusses the application before taking a vote (proposed and seconded followed by a show of hands) on whether or not to agree with the officer’s recommendation. The Chair has a casting vote. Members can add conditions to a permission but they cannot amend the application itself (for example, by allowing a one-bedroom flat if the application is for a two-bedroom flat). Any additional conditions should be proposed and seconded before being voted on by members. Members should be aware that conditions can be tested at appeal and they should, therefore, be necessary, enforceable, reasonable and relevant to planning and the development under consideration.

24. Members must be present for the entire item, including the officer’s introduction and update; otherwise they cannot take part in the debate or vote on that item. However, the chair of the planning committee can use their discretion in exceptional circumstances.

PRE-DETERMINATION HEARINGS

25. In order to enhance scrutiny for applications for major development which may raise issues with particular sensitivity for a local area, Regulation 7 of the Planning (Development Management) Regulations (NI) 2015 sets out a mandatory requirement for pre-determination hearings for those major developments which have been subject to notification (i.e. referred to the Department for call-in consideration, but that have been returned to a council for determination). A council’s planning committee will therefore have to hold a hearing prior to the application being determined. In addition, councils may also hold pre-determination hearings, at their own discretion, where they consider it necessary, to take on board local community views, as well as those in support of the development. The intention is to give applicants and those who have submitted relevant representations the opportunity to be heard by the council before it takes a decision. This will make the application process for major development more inclusive and transparent.

26. The scope to hold these hearings is likely to apply only to those applications for major developments which have attracted a significant body of relevant planning-based objections. It would be for an individual council to judge when a significant body of relevant planning objections was a sufficient material consideration to warrant a pre-determination hearing, taking account of:
the relevance of the objections in planning terms;
the extent to which relevant objections are representative of the community, particularly in the context of pre-application community consultation; and
the numbers of representations against the proposal in relation to where the proposal is and the number of people likely to be affected by the proposal.

27. Any hearing should take place after the expiry of the period for making representations on the application but before the council decides the application. It will be for the planning committee to decide whether it wishes to have a hearing on the same day as the related planning application is determined by the planning committee or to hold a separate hearing. The scale and complexity of the planning issues will have to be considered. In holding a hearing the planning committee procedures can be the same as for the normal planning committee meetings (e.g. number of individuals to speak on either side, time available to speakers etc.). The planning officer will produce a report detailing the processing of the application to date and the planning issues to be considered. If the planning committee decides to hold the hearing on the same day as it wishes to determine the application the report to councillors should also contain a recommendation.

PUBLIC SPEAKING AT PLANNING COMMITTEE MEETINGS

28. Good practice, following research in other jurisdictions, suggests the following procedures should be followed when conducting planning committee meetings:

- planning committee meetings should be open to the public;
- requests to speak should be received by the council (in writing or by email) no later than 12.00pm two working days prior to the meeting setting out the planning reasons the speaker wishes to raise; however, at the meeting the Chair can decide whether to allow any relevant information to be tabled which was not made available to members in advance of the meeting;
- the planning committee should be provided with copies of these statements;
• other councillors may attend and speak about an application but only planning committee members can vote;
• local councillors may speak for 5 minutes, members of the public (including agents / representatives etc.) for 3 minutes;
• in addition to councillors addressing the planning committee, one person from those objecting to the proposal and one person in support of the proposal should be allowed to speak. Where there is more than one request to speak, the 3 minutes should be shared between them or they can appoint one representative;
• if an objector speaks the applicant should be allowed to respond if they wish even if they have not registered to speak in advance;
• the planning committee may seek clarification of those who have spoken on any issues raised by them but not enter into a debate with them;
• no documentation should be circulated at the meeting to members by speakers;
• applications where there will be speakers from the public should be taken first;
• Planning officers can address any issues raised and the planning committee can question officers; and
• the Chair may agree to accept representations outside these procedures under exceptional circumstances.

DECISIONS CONTRARY TO OFFICER RECOMMENDATION

29. The planning committee has to reach its own decision. Officers offer advice and make a recommendation. Planning officers’ views, opinions and recommendations may, on occasion, be at odds with the views, opinions or decisions of the planning committee or its members. This is acceptable where planning issues are finely balanced as there should always be scope for members to express a different view from officers. A planning committee can accept or place a different interpretation on, or give different weight to, the various arguments and material planning considerations.
Overturning recommendation to approve

30. Any member who does not agree with the officer recommendation to approve an application can propose reasons for refusal, which need to be seconded by another member and then voted on. Any decision by the planning committee must be based on proper planning reasons. The planning officer should always be given the opportunity to explain the implications of the planning committee’s decision. The reasons for any decisions which are made contrary to the planning officer’s recommendation must be formally recorded in the minutes and a copy placed on the planning application file / electronic record.

31. Councillors who reject a planning application that officers have advised them to accept risk being overturned on appeal (to the Planning Appeals Commission), with the potential for costs awarded against the council if no sound reasons for the decision have been given. The Chair should seek the views of officers (including the council’s solicitor) before going to the vote in terms of reasons for refusal that are contrary to officer recommendation. Officers should endeavour to summarise what are considered to be the main reasons for refusal referred to by members during the debate and include advice on what would be reasonable and what would not be reasonable reasons for refusal.

32. If officers consider that the suggested planning refusal reasons are reasonable and capable of being defended on appeal members should vote on the reasons for refusal. If the view of officers is that the reasons for refusal are either in whole or in part not capable of being defended then members should give consideration to deferring determination of the planning application until the next planning committee and ask for a further report (and / or site visit) to ensure it has all the relevant information it considers necessary to inform its decision. Advice and assistance should be sought from council solicitors, as necessary.

33. In the event of an appeal against a refusal of planning permission contrary to officer recommendation, it is a matter for each council to decide who should attend the appeal to defend the decision. However, the following options are available:
   - councils could require planning officials to prepare the case for written submissions and / or attend the appeal even if it is against their recommendation;
• some may require the members who proposed and seconded a motion to refuse consent contrary to officer recommendation to be called as council’s witnesses;
• some may use planning consultants or different planners from those who made the original recommendation.

**Overturning recommendation to refuse**

34. If the planning committee decides to approve an application against the officer’s recommendation to refuse, the planning committee should be aware that, while there is no right of third party appeal, there is the possibility that the decision could be subject to judicial review. Again, councils will have to decide who should defend the council’s decision in court.

35. It is critical that the minutes accurately reflect the discussions and decisions taken during the meetings as these could be used as evidence should any complaints be made about how decisions are taken. Members may wish to consider taking their own notes on controversial applications.

**DECISIONS CONTRARY TO LOCAL DEVELOPMENT PLAN**

36. In general, planning decisions should be taken in accordance with the local development plan (in so far as it is material to the application) unless material considerations indicate otherwise. If a planning committee member proposes, seconds or supports a decision contrary to the local development plan they will need to clearly identify and understand the planning reasons for doing so, and clearly demonstrate how these reasons justify overruling the development plan. The reasons for any decisions which are made contrary to the development plan must be formally recorded in the minutes and a copy placed on the planning application file / electronic record.

**DEFERRALS**

37. The planning committee can decide to defer consideration of an application to the next meeting for further information, further negotiations or for a site visit. Members should be aware, however, that deferrals will inevitably have an adverse effect on processing times and should restrict themselves, where
possible, to one deferral only. In addition, there should be clear reasons why a deferral is necessary.

SITE VISITS

38. It is recognised that, on occasions, members of the planning committee may need to visit a site to help them make a decision on a planning application (e.g. where the impact or effect of the proposed development is difficult to visualise from the plans or photographs, or the application is particularly contentious). However, these visits should be undertaken on an exceptional basis as they are time-consuming and expensive. Where required, they may be identified by officers in consultation with the Chair or they may be asked for by planning committee members, but these should only be permitted where the benefit is expected to be of considerable value.

39. The planning committee clerk should contact the applicant / agent to arrange access to the site. Invitations should then be sent to members of the planning committee. Site visits are not an opportunity to lobby councillors or to be used to seek to influence the outcome of a proposal prior to the planning committee meeting. Councillors should not carry out their own unaccompanied site visits as there may be issues relating to permission for access to land, they will not have the information provided by the planning officer, and, in some circumstances (e.g. where a councillor is seen with applicant or objector) it might lead to allegations of bias. It is recommended that only planning committee members, officers, and local councillors should be permitted to attend the site visit. Where possible, the full planning committee should attend site visits, unless there are good reasons (e.g. a member is already very familiar with the site). The clerk to the planning committee should record the date of the visit, attendees and any other relevant information.

40. Planning officers should prepare a written report on the site visit which should then be presented to the next planning committee meeting at which the application is to be determined.
TRAINING

41. It is strongly recommended that councillors sitting on planning committees should be required to attend relevant training on planning matters before they can sit on the planning committee – this would allow for a generally consistent approach to be taken. This requirement should be extended to planning committee members continuing to receive relevant training on an ongoing basis. It is also strongly recommended that planning committee chairs should receive separate, additional training in relation to their roles.

NETWORK

42. It is recommended that a network of planning committee chairs should be established and meet regularly to discuss matters of common interest.

REVIEW OF DECISIONS

43. On an annual basis members should inspect a sample of implemented planning decisions in order to assess the quality of decision-making. This should include a sample of decisions delegated to officers to give assurance that the scheme of delegation is operating effectively and in line with the council’s views.

LEGAL ADVISER

44. It is strongly recommended that the planning committee has access to legal advice on planning matters, preferably attending each planning committee meeting.