



Doncaster Council

Report

15th September 2020

To the Chair and Members of the
PLANNING COMMITTEE

DONCASTER COUNCIL PLANNING COMMITTEE PROTOCOL

| Relevant Cabinet Member(s) | Wards Affected | Key Decision |
|-----------------------------------|-----------------------|---------------------|
| Chris McGuinness | All | No |

EXECUTIVE SUMMARY

1. This report summarises the 'Planning Committee Protocol' ('the Protocol') - see appendix 1. The purpose of this Protocol is to aid Members, Officers, Parish Councils, residents and applicants/agents by having an up to date, clear and transparent document on how this important part of the planning process is carried out.
2. The Protocol responds positively to the 'Planning Committee Peer Review', which was undertaken by Planning Advisory Service (PAS) in November 2018 (see Appendix 2). The peer team used their extensive experience and knowledge of local government and good constitutional governance in order to put forward their suggestions for improvement.
3. The key findings of this report highlighted a number of potential improvements to the Planning Committee function and associated processes, specifically in relation to:
 - i) How matters previously dealt with via Technical Briefings needed to stop and would be dealt with moving forwards;
 - ii) Improvement in the presentation of material at Planning Committee;
 - iii) Improvement in the quality of Member debate;
 - iv) Improvement in Planning Committee procedures and operation in order to support the Chair in running the committee well;
 - v) Consistency in applying public speaking rules at the meeting; and
 - vi) Site visit procedures.
4. Importantly, adoption and implementation of this Protocol will mean that the

final outstanding actions from the Peer Review recommendations will have been addressed and completed (see Appendix 3).

5. Consistency, fairness and openness are important qualities for any regulatory function and are particularly vital to the conduct of a Planning Committee. Planning decisions are based on balancing competing interests and making an informed judgment against a local and national policy framework. Decisions can be controversial and the risk of controversy and conflict are heightened by the openness of the system which invites public opinion before taking decisions and the legal nature of the development plan and development notices. Adherence to the Protocol is intended to ensure the process is clear and transparent thus building public confidence in the Council's planning system whilst seeking to respond to the recommended improvements from PAS.
6. The purpose of the Protocol is:
 - i) to state how the Members of the Planning Committee will exercise those functions, including behaviour in relation to applicants, residents and other third parties;
 - ii) to ensure a consistent and proper approach by all Members to the exercise of planning functions;
 - iii) to ensure applicants and their agents, residents and other third parties are dealt with by Members consistently, openly and fairly;
 - iv) to ensure the probity of planning transactions and the high standards expected in public office; and
 - v) to ensure that planning decisions are made openly, fairly and in the public interest, in accordance with legislation and guidance.
7. To achieve this, the Planning Committee Protocol covers the following aspects:
 - i) **Planning Committee consideration criteria** – via written request or in line with the approved Scheme of Delegation;
 - ii) **Public speaking procedures;**
 - iii) **The registering to speak procedure;**
 - iv) **Items on the Planning Committee agenda;**
 - v) **Presentation of new information;**
 - vi) **A summary of examples of both material and non-material planning considerations** - a summary;
 - vii) **Site visits** - requests for, arrangements, attendance at, conduct, and voting requirements;
 - viii) **Pre-Planning Committee amendments;**

- ix) Order of proceedings;
- x) Good decision making;
- xi) Voting procedures;
- xii) Review and monitoring of the Protocol.

8. The intention is, once adopted, that the Protocol will be uploaded to the Council's website where it can be clearly and easily referred to by interested parties. What is included in the Protocol is nationally recognised as good governance and constitutes best practice.
9. In terms of consultation the following has taken place:
- a. Informal consultation with Planning Committee (15th October 2019)
 - b. Briefing with the Portfolio Holder Cllr McGuinness (various dates)
 - c. Cabinet informal consideration (10th September 2019)
 - d. All Member engagement session (17th December 2019)
 - e. Further All Member written consultation following the engagement session above to ensure all members have an opportunity to feed into the document (deadline for final comments 15th January 2020).
 - f. Executive Board (14th July 2020).
 - g. Cabinet (20th August 2020)
10. As a result of all this consultation, the following matters were raised and have been considered and incorporated into the revised Planning Committee Protocol:

Written feedback from Members

- a. *"The only reservation I have is around the site visit being a necessary part of the process. I understand why this has been put in place. So it remains how it pans out practically over the next year, following implementation."*

RESPONSE: This will be continually assessed following implementation of the Protocol.

- b. *"I believe a ward councillor should not have to submit a request to speak at least 120 hours before the committee although I would certainly encourage it, as often you are requested at the last minute by a resident to speak either in favour or against an application at the last minute. I therefore request that ward councillors have the ability to notify prior to commencement of the actual committee meeting."*

RESPONSE: This has been incorporated into the Protocol (at para 3.5).

- c. *"I still think that the speakers could be unbalanced if 2 councillors wish to speak against as well as an objector there could be 15mins on one side and only 5 mins on the other from the applicant/agent."*

RESPONSE: The amount of time available to Ward Members for speaking has been reduced from a maximum of 15 mins to 10 mins maximum (at para. 3.9). It remains at Chair's discretion to allow longer speaking times – especially for 'Exceptional Planning Committee' meetings which may require more technical information to be presented.

Feedback at the All Member engagement session

- d. *“Site visits – not necessary to attend first meeting (where deferred) – just need to be present at the visit and then the committee after – to be eligible to vote.”*

RESPONSE: The need to be at the first Planning Committee meeting where an item is deferred for a site visit in order to be eligible to vote has been removed from paras. 4.3 & 4.9.2. It is felt that the site visit itself and consideration of the report returning back to Planning Committee provides enough information for Planning Committee members to be able to reach an informed and robust decision.

- e. *“It's felt the Protocol should go to Full Council for approval.”*

RESPONSE: The Protocol is a document that is to be adhered to by the Planning Committee. All Member consultation has taken place and all feedback has been assessed and incorporated where possible. The Protocol is therefore proposed to be agreed to by the Planning Committee.

- f. *“We shouldn't be able to accept amendments to plans at the last minute as members of the public, ward members and planning committee haven't had an opportunity to digest the changes and assess if this will impact their viewpoint on the application.”*

RESPONSE: Late amendments are a part of the planning process and it is not in the LPA's control as to when information may be submitted. Should late amendments be submitted – it will be for the case officer to make a judgement as to whether the information is able to be dealt with by pre-committee amendments or if the change is so significant, that the committee item should be withdrawn from the agenda to allow fuller consultation and consideration to take place.

11. The attached Protocol represents the final version of the Planning Committee Protocol, having responded to all the additional consultation and feedback that has been received.

EXEMPT REPORT

12. This report is not exempt.

RECOMMENDATIONS

13. The Planning Committee are recommended to:

- i) To agree and adopt the Planning Committee Protocol.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

14. Having a Planning Committee Protocol will ensure that there are no grounds for suggesting that a decision has been biased or not well founded in any way. One of the key purposes of the planning system is to regulate development and use of land in the public interest. The role of a Member of the Planning Authority is to make planning decisions openly, impartially, with sound judgment and for justifiable reasons. Members are also democratically accountable decision-takers who have been elected to provide and pursue policies. The Protocol will ensure that the Council is operating to the highest standard of probity in the performance of its planning function. Consistency, fairness and openness are important qualities for any regulatory function in the public eye and they are vital to the conduct of a Planning Committee.
15. The Protocol aims to reinforce councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges. The protocol should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper. Adherence to the Protocol is intended to build public confidence in the Council's planning system.

BACKGROUND

16. The determination of planning applications is a process involving the application of national, strategic, local and neighbourhood level planning policies within a legislative framework.
17. Planning decisions can be appealed by unsuccessful applicants and challenged by way of judicial review by third parties. Complaints about maladministration and injustice can also be made to the Local Government Ombudsman.
18. It is important that those involved in the determination of planning applications, and particularly officers and Members, act reasonably and fairly to applicants, supporters and objectors. This Protocol will therefore ensure fairness to all and consistency in the functions of the Planning Committee.
19. The current functioning of the Planning Committee is done in relation to a number of existing approved documents, which include:
 - Planning Committee – Request to Speak (online)
 - Planning Committee Site Visits – guidance note
 - Planning Committee Technical Briefings – guidance note

These documents are guidance notes and therefore provide general advice rather than clear and unambiguous ways of working as proposed in the Protocol. As such, it is recognised that the current Planning Committee guidance documents are open to interpretation and sometimes lead to haphazard approaches (for example, requests to speak being received in

the middle of a committee meeting) and does not represent good governance or meet expected standards.

20. The Council's Members' Code of Conduct rules must be always be complied with. The Members' Code sets out both the rules on disclosable pecuniary interests (and other interests) and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Protocol seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control.
21. This Protocol updates, consolidates and will ultimately supercede the Planning Committee guidance notes referred to above, and in so doing provide one easily referable document. By adhering to the Protocol all those involved in the Planning Committee process should not have any doubt about how the Committee meeting will be conducted and how the Protocol will be applied throughout the decision making process. In turn this should reduce the risk of judicial review or complaints about maladministration and injustice to the Local Government Ombudsman – representing good constitutional governance.

OPTIONS CONSIDERED

22. There are two options available for the Planning Committee Protocol:

- **OPTION 1 (RECOMMENDED)** – Agree that the Planning Committee Protocol should be adopted.
- **OPTION 2 (NOT RECOMMENDED)** – Do not agree that the Planning Committee Protocol should be adopted.

REASONS FOR RECOMMENDED OPTION

23. Option 1 is recommended in order to respond positively to the independent advice given by PAS as part of the Peer Review of the Planning Committee process.
24. Currently, the functioning of the Planning Committee is done in accordance with a number of documents (i.e. speaking at Planning Committee; Technical Briefing guidance note; Site Visit guidance note), which are not readily accessible, outdated and in places (i.e. Technical Briefings) at odds with the advice from PAS. This does not meet nationally expected standards and does not represent good constitutional governance.
25. By agreeing the Planning Committee Protocol, these various documents will be superseded by being pulled into one, transparent and user friendly document that is easily referable. This will ensure that Doncaster Council moves forward by carrying out its Planning Committee function in a manner considered to be best practice amongst other Local Authorities and in line with the Peer Review recommendations.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

26. The Planning Committee Protocol is considered to positively impact on Doncaster Council's key outcomes as follows:

| | Outcomes | Implications |
|--|---|---|
| | <p>Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> • Better access to good fulfilling work • Doncaster businesses are supported to flourish • Inward Investment | <p>The Planning Committee Protocol will provide confidence for inward investment and existing businesses in terms of being much more transparent in how planning applications are dealt with at future Planning Committee meetings.</p> |
| | <p>Doncaster Living: Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> • The town centres are the beating heart of Doncaster • More people can live in a good quality, affordable home • Healthy and Vibrant Communities through Physical Activity and Sport • Everyone takes responsibility for keeping Doncaster Clean • Building on our cultural, artistic and sporting heritage | <p>The Planning Committee Protocol will provide confidence for both prospective house-builders and people affected by such proposals in terms of being much more transparent in how planning applications are dealt with at future Planning Committee meetings.</p> |
| | <p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> • Every child has life-changing learning experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work | <p>N/A</p> |

| | | |
|--|--|---|
| | <p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust • Older people can live well and independently in their own homes | N/A |
| | <p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting community assets and strengths • Working with our partners and residents to provide effective leadership and governance | <p>The Planning Committee Protocol will create consistency, fairness and openness, which are important qualities for any regulatory function in the public eye and is vital to the conduct of a Planning Committee.</p> <p>Adherence to the protocol is intended to build customer confidence in the Council's planning system whilst seeking to address the suggested improvements by PAS.</p> |

RISKS AND ASSUMPTIONS

27. Not agreeing to the Protocol will leave the Council operating in many regards as it was before the Peer Review conducted their work by not responding to the feedback and key recommendations provided. Whilst a number of Planning Committee improvements are already completed or well progressed (i.e. specifically in relation to the customer experience, providing enforcement updates in an open forum and improvement in the quality of officer reports) – many key aspects in relation to the proper functioning of the Planning Committee process need to be updated to avoid the risk of 3rd party challenges to our processes.

28. In terms of the proposed changes to mandatory site visits in order for Planning Committee Members to be eligible to vote on applications – there is a risk that Planning Committee meetings may not be quorate in order to vote on site-visited applications. This will be assessed via the proposed monitoring of the Protocol – as laid out in para. 10.

LEGAL IMPLICATIONS [Officer Initials SC Date 04.09.20]

29. The Council's Code of Conduct for Members concerns probity and other aspects of conduct across the whole range of a Member's duties. This Protocol (which is intended to supplement the Member Code of Conduct) seeks to relate the Code of Conduct's requirements specifically to planning.

However, it goes beyond the specific concerns of the Member's Code of Conduct to give more detailed advice on the operation of the planning system. It seeks to ensure that the council, its officers and its elected councillors maintain the highest standards of conduct.

30. Planning is a sensitive area of local authority work because much is often at stake (considerable sums of money can hinge on individual planning decisions and strong emotions are often felt by those supporting or opposing development proposals within the borough). It is particularly important, therefore, that the planning process is conducted in a fair, open and even-handed way.
31. Determining a planning application is a formal administrative process involving rules of procedure, rights of appeal, and an expectation that people will act reasonably and fairly. Those involved should always be alert to the possibility that an aggrieved party may:
- a) seek judicial review of the way the decision was arrived at; and/or
 - b) complain to the Ombudsman on grounds of maladministration; and/or
 - c) complain to the Monitoring Officer (with a potential to be referred to Audit Committee's Hearings Sub-Committee) that a Member has breached the Code of Conduct.
32. It is therefore crucial to ensure the integrity of the planning system is preserved, and that decisions are made openly, impartially, with sound judgement and for justifiable reasons. Likewise it is vital that there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. Adoption of a Planning Protocol (in conjunction with abiding by the Members' Code) would reduce:
- a) the Council being at risk of proceedings on the legality or maladministration of the related decision; and
 - b) Councillors at risk of either being named in a report made to the Audit Committee or Council or, if the failure is also likely to be a breach of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.
33. The Protocol takes into account the update to the Seven Principles of Public Life (the 'Nolan principles') and commentary from the Committee on standards in public life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on 'Openness and transparency on personal interests' published by the Department for Communities and Local Government 2013.

FINANCIAL IMPLICATIONS [BC Date 26/07/2019]

34. There are no direct financial implications to the recommendations of this report.

HUMAN RESOURCES IMPLICATIONS [Officer Initials CR Date 30/07/2019]

35. There are no HR implications specific to the recommendations in the report, however, any emerging matters that impact on the workforce will require HR engagement at the appropriate time.

TECHNOLOGY IMPLICATIONS [Officer Initials PW Date 6/8/2019]

36. None

HEALTH IMPLICATIONS [Officer Initials CT Date 30/07/2019]

37. Public Health welcomes the introduction of the protocol which will bring together a variety of guidance documents together in one place. Good spatial planning has a positive impact on the health and wellbeing of our communities. It is imperative that good governance is in place to ensure committee decisions are made according to policy and procedure therefore it is important that these are explicit, ensuring everyone concerned understands the processes and rules associated with the decision making process.

EQUALITY IMPLICATIONS [Officer Initials RS Date 1/8/2019]

38. Adoption of the Planning Committee Protocol will continue to adhere to the Planning Statement of Community Involvement (adopted 2015). If an application is to go before the Planning Committee for a decision, all parties that have made representations will continue to be informed of the time and date of the planning committee meeting and how they may make a request to speak at the meeting if they wish to do so.

Anyone wanting to speak at Planning Committee (including Ward, Town or Parish Councillors) must register a 'Request to Speak' in advance by either filling out a 'Request to Speak at Planning Committee' e-form on the Planning section of the Council's website; or by contacting the Planning Case Officer or a member of the TSI team.

A 'Request to Speak' **must** be received at least 120 hours before the start of the Planning Committee meeting. Requests to speak will not be carried forward to future Planning Committee meetings and therefore it will be necessary to register a 'Request to Speak' for each and every Committee meeting

All of the above will not prejudice any interested parties and the Protocol will be viewable on line for transparency and to easily refer to.

The Planning Committee Protocol importantly includes a mechanism for reviewing and revising should aspects of it need to change.

CONSULTATION

39. Extensive informal and formal consultation has taken place (see para. 9 above) with Planning Committee, Executive Board, Cabinet and Portfolio Holder and all Members.

BACKGROUND PAPERS

40. Appendix 1 – Planning Committee Protocol

Appendix 2 - Planning Committee Peer Review (Key Findings Report 2018)

Appendix 3 – Peer Review Actions Progress Report

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