



PLANNING COMMITTEE – 6TH APRIL 2016

SUBJECT: CONSULTATION FROM WELSH LOCAL GOVERNMENT ASSOCIATION ABOUT A NATIONAL PLANNING COMMITTEE PROTOCOL FOR WALES

REPORT BY: CORPORATE DIRECTOR COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 To seek Members review on the consultation from the WLGA on a National Planning Committee Protocol for Wales as part of the consultation process.

2. SUMMARY

- 2.1 The Welsh Local Government Association (WLGA) has consulted on its draft Planning Committee protocol, a copy of which has been sent to members in preparation for the consideration of this item. Welsh Government (WG) wishes to introduce a national protocol to improve consistency across the 25 LPAs while ensuring a level of local flexibility through the discretion of the Chair and locally determined procedures such as the committee meeting running order.

3. LINKS TO STRATEGY

- 3.1 The report takes account of the Caerphilly Planning Code of Practice.

4. THE REPORT

- 4.1 The consultation is structured similarly to WG consultations in that the proposed protocol contains a number of questions to which we are required to respond. The document is difficult to summarise since each paragraph sets out a different aspect of the protocol. Therefore, the full draft protocol is attached as an appendix, and suggested answers to the questions set out below: -

- 4.2 Q.1 Do you agree with having a national planning protocol?

No. Guidance along the lines of e.g. there should be an opportunity for members of the public to address the Planning Committee, is acceptable, but it should be no more prescriptive than that. There is more than one way to deliver the planning service, and each LPA knows what is practicable and effective within its particular area. However, the comments below are based on an assumption that a national protocol will be introduced.

- 4.3 Q2. Do these proposals differ from the protocol you have in place? Do you see any difficulties with adopting these proposals?

The restrictions concerning the conduct of all members particularly where they submit a planning application are more extensive than those set out in the Council's current Planning Code of Practice adopted in 2007, but they are clearly in line with the principles set out in that document, and are supported.

- 4.4 Q3. Does the proposal regarding voting differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

This part of the protocol addresses the issue of a 'closed mind', and suggests two scenarios for members of the Planning Committee acting in respect of applications in their wards. Where they are acting as a member for their electoral ward, they will be able to speak but not vote on an application; but where they act as a member of the committee they may speak and vote on an application in their ward. With regard to the 'closed mind' issue, the protocol is ambiguous. It states that elected members should not fetter their discretion, but they are entitled to express views on planning issues and that these comments have an added measure of protection under the Localism Act 2011. Furthermore, having expressed their own views on a matter, provided members are prepared to reconsider their position in the light of all the evidence and arguments, they are entitled to make a decision. The general advice should be that members of the Planning Committee should be discouraged from stating any views about planning matters until they are making a decision at the committee. This provides clarity to members and to the public. Similarly, the distinction between members acting as ward members, and as members of the Planning Committee is unclear and will only cause confusion. There is some merit in preventing members voting on applications in their own ward, particularly where committees are small and not all wards are represented, but the distinction suggested will be difficult to justify and unclear to the public.

- 4.5 Q4. Are members currently involved in pre-application discussions? Do you see any difficulties with adopting these proposals?

Members of this LPA's Planning Committee are not involved in pre-application discussions, but as of 16 March 2016 they will be consulted by applicants for major development before a formal submission is made. A protocol should address members' conduct in that situation. The advice in the protocol about the conduct of members is acceptable.

- 4.6 Q5. Do these proposals [concerning contact with applicants, developers and objectors] differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

The draft protocol includes the following: "Don't agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the [Development Control Manager] to organise it." This Council has never organised public meetings with objectors. Objectors can make their views known to the LPA in writing and can attend the Council's offices where a duty officer can answer their questions. They can also attend and speak at the Planning Committee. Arranging public meetings with objectors would place a significant burden on staff time, and unless properly minuted, could lead to misunderstandings, disagreements and possibly raise issues of probity. Members should be discouraged from arranging meetings with the applicants and developers. The Council's officers will arrange meetings where necessary. The other aspects of this part of the protocol are acceptable.

- 4.7 Q6. Do these proposals [for Lobbying of Councillors] differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

The proposals are similar to those in the Council's current code of conduct.

- 4.8 Q7. Do these proposals [for Lobbying by Councillors] differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

The proposals are similar to those in the Council's current code of conduct.

- 4.9 Q8. Do you see any difficulties with adopting these [Site Visits/Inspections] proposals?

The general content of this part of the protocol is acceptable, but it appears to be based on the procedure whereby Planning Committee decides when a site visit should be held. That delays the determination of applications, and this LPA has recently, in line with recommendations from the RTPI, introduced a procedure whereby a site visit is held before the Planning Committee to which the application is being reported. The draft protocol should be modified to allow this. The protocol also states that site visits would not be appropriate where purely policy matters or issues of principle are at issue. This is unduly restrictive; for instance, officers may be recommending approval of a residential development outside but adjoining the settlement because of the physical characteristics of a site, and it would be reasonable for members to wish to visit the site to assess those factors.

- 4.10 Q9. Does your authority allow public speaking? If not are there any reasons why public speaking cannot be allowed?

Yes. Public speaking should be encouraged in all cases.

- 4.11 Q10. Do these proposals [for Public Speaking Procedures] differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

The proposals are similar to those operated by this LPA, but we allow visual aids and supporting evidence that can be handed around at the committee. Our order of speaking allows the applicant to go last so that they can take the opportunity to address any issues raised by other speakers. Also we only allow one speaker for and against a scheme, apart from exceptional circumstances such as the Nant Llesg open cast mine, or the Sirhowy Enterprise Way, where more than one was allowed, but each had to address different issues. Non-Planning Committee members have a right to address the committee in any case, but they would also appear in the objector/supporter order set out above. This LPA also commences each item with a short presentation by the case officer, including photographs and plans, before objectors, applicants and members speak. This helps to set the context for the committee, and brings out the important material planning considerations.

- 4.12. Q11. Do these proposals [for the Role of Officers and Decision Making] differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

The general thrust of these proposals is acceptable apart from the requirement to "...ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee." This is an administrative matter which has no bearing on the planning merits of a case, and the requirement to include reference to it in the committee report introduces an opportunity for decisions to be judicially reviewed. Also, there are often good non-planning reasons, e.g. transparency, for applications to be reported to the Planning Committee. Some major schemes are acceptable in planning terms and are non-controversial, but in view of the planning history of the sites, or maybe their prominence, it is often prudent to report such proposals to the committee.

- 4.13. Q12. What are your views on having a cooling off period?

The cooling off period is essential. LPAs have a statutory duty to make decisions in accordance with the development plan unless material considerations indicate otherwise. The officers' recommendation will abide by that requirement, and may often be result of many months' work, discussion and negotiation. Overturning the recommendation 'on the night' without the cooling off period may make LPAs vulnerable to judicial review for failing to comply with the statutory duty. Also, reasons for refusal put forward on the night may have no sound basis, making the LPA vulnerable to costs at appeal. The cooling off period allows the suggested reasons to be considered and tested before a final decision is made. Where members are minded to approve a scheme against officer recommendation, the cooling off period allows proper consideration to be given to the appropriate conditions.

- 4.14 Q13. Are these duties [of the Chair] different from current duties? Do you consider that training for Chair of Planning Committee would be required?

There are no objections to the proposed duties. Training would be advisable. This LPA provides chairing skills training for all committee chairs including Planning, and additional training to the Planning Committee Chair, through a mandatory and requested training programme.

- 4.15 Q14. Do these proposals [for Role of Members at a Planning Appeal] differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

The paragraphs in this section will be considered individually where necessary.

It is acceptable for a member of the [planning committee] to advocate the decision made by the [planning committee] but it is recommended that an officer provides technical support to the Member at the appeal and deals with any technical or process issues raised by the Inspector or other participants. This Council requires the proposer and seconder of the motion to refuse an application against officer recommendation to represent the Council at a hearing or inquiry. Planning officers will provide administrative support, and advice about the preparation of evidence, but they cannot deal with technical and process issues at an inquiry or hearing as they may be vulnerable to cross-examination from the appellants.

A Member who disagrees with the [planning committee] should not make opposing representations at an appeal and should accept the decision of the [planning committee] as being fair, open and democratic. Where a Member wishes to make representations at an appeal that are contrary to the decision of the [planning committee] they should first inform the [Development Control Manager] of their decision so that the Planning Inspectorate can be informed. Members in these circumstances must understand that the views that they put forward do not represent the views of the Council or the [planning committee]. The first sentence in this section contradicts the remainder. The important thing is that where members decide to appear at an appeal and present views contrary to those of the Planning Committee, they make it clear that they are acting in a personal capacity, and not on behalf of the Local Planning Authority.

- 4.16 Q15. Do you currently require planning committee members to undertake training before participating in any decision making? Would you support a national approach to provision of training resources?

Yes to both questions. Planning Committee members have to undertake mandatory training before taking up a place on the Planning Committee; this is supplemented with annual refresher and update training and specialist presentations throughout the year.

- 4.17 Q16. Do these proposals [for Customer Care] differ from the current customer care arrangements you have in place?

Do you see any difficulties with preparing a local procedure as set out in paragraph 15.1?

The proposals are broadly in accordance with this LPA's current practices. However, the proposed requirement that the public be provided with sufficient copies of the agenda for the meeting, and that copies of the procedure adopted by the Council for the conduct of the meeting should be made available, is onerous and impracticable, particularly as there are often up to 50 people in the gallery. Documents are now made available on line in advance of the committee allowing people to look at and print documents at home.

- 4.18 Q17. Do you have any additional comments not covered in the questions above?

The final section of the protocol, 'Advice on attending and speaking at the [Planning Committee]', contains the following, which should be modified.

4. What if a lot of people want to speak?

If a number of people wish to speak either for, or against, a particular planning application on similar grounds, you should try to combine your representations with them and nominate one spokesperson to speak on your behalf. This will avoid unnecessary repetition at the Committee meeting.

If the intention is to produce a national protocol, this needs to be more prescriptive, i.e. only one person will be allowed to speak at the Planning Committee. If more than one person wishes to speak they will have to nominate a single spokesperson. Only in exceptional circumstances, e.g. a development of the scale of the Nant Llesg surface mine will more than one person be allowed to speak, and in those circumstances, each speaker must address a separate issue. The advice about the order of speakers, and site visits should be modified to reflect the comments already made above. The advice on 'What happens after the public speaking' does not take account of electronic voting. Also, where members disagree with the officers' recommendation, at this LPA they vote to defer a decision to allow officers to prepare reasons for refusal, or conditions, whichever is appropriate. There is no mention of webcasting and its implications.

5. EQUALITIES IMPLICATIONS

5.1 There would be no equalities implication in respect of this recommended response

6. FINANCIAL IMPLICATIONS

6.1 None

7. PERSONNEL IMPLICATIONS

7.1 None

8. CONSULTATIONS

8.1 None

9. RECOMMENDATIONS

9.1 That Officers reply to the questions set out in the consultation on the basis of the comments above and any additional comments from Members

10. REASONS FOR THE RECOMMENDATIONS

10.1 As set out in the report above

11. STATUTORY POWER

11.1 The Town and Country Planning Act 1990 and related acts and statutes

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Appendices:

Appendix 1 Draft Protocol