

PLANNING MATTERS: LOCAL PROTOCOL FOR COUNCILLORS
APPENDIX 1

ADVICE NOTE FOR MEMBER INVOLVEMENT IN PRE APPLICATION DISCUSSIONS

INTRODUCTION

In December 2009 the Department of Communities and Local Government (DCLG) published a consultation document entitled "Development Management: Proactive planning from pre-application to delivery". Development Management introduces a proactive and engaging approach to dealing with developments as opposed to the traditional regulatory role that has been taken in the past. A greater emphasis is placed on pre application discussions.

The Council is committed to providing a Development Management service for local communities; inward investors; developers; other statutory bodies and infrastructure providers in order to promote high quality, sustainable development. A Development Management approach, however, will necessitate a change in the way that both officers and elected Members work within the planning applications system. Development Management encourages Councillors to be involved in pre application discussions to act as champions of their communities but without prejudicing their role as decision makers.

The purpose of this advice note is to provide clear guidance to ensure that elected Members can take part in discussions on development proposals at all relevant stages, including when options are being scoped and plans shaped, without prejudicing their decisions or compromising the integrity of the process.

WHAT SCHEMES WILL BE CONSIDERED?

The level of pre-application engagement by Members and Officers will depend on a range of considerations, including: the scale and complexity of the proposal; and the willingness of those proposing the development to engage in the process. It is more likely that Members will become involved in pre application discussions on major proposals of strategic importance that will shape the future of our communities and help to deliver the Council's aspirations in the Local Development Framework (LDF); the Corporate Plan; and the Sustainable Community Strategy.

The schemes will be selected for consideration by the Head of Planning Services (or their representative). The agreement of the developer will always be necessary.

The majority of pre application discussions on more minor proposals will continue to be undertaken by officers. However, this does not preclude the involvement of Members in minor proposals where it is held that these may be of particular significance to a local community. This will be at the discretion of

the Head of Planning Services (or their representative). The same guidance applies, regardless of the scale and nature of the proposal.

HOW WILL THE SCHEMES BE CONSIDERED?

The selected schemes will take the form of pre organised meetings with applicants and developers at the invitation of the Head of Planning Services (or their representative). The timing of these meetings will be essential to ensure that developments evolve through genuine discussion. Before any Member involvement a pre application scheme will have first been considered by the Council's Development Team and potentially by the Essex Design Initiative Panel (or alternative design expert). For certain major, complex proposals it may be necessary to have more than one Member meeting and, to this end, a schedule of involvement will be agreed with the developer by officers.

Members should only attend those meetings organised in accordance with this advice note and not arrange private meetings with developers.

WHO WILL ATTEND?

The meetings will be attended by:

- The Portfolio Holder for Planning
- The Chairman and Vice Chairman of the Planning Committee
- Local Ward Members
- The relevant Member for Essex County Council
- Any other Members at the discretion of the Head of Planning Services
- The Head of Planning Services or the Executive Manager – Planning Services
- At least one other officer from Planning Services
- The applicant/developer and/or their representative
- Any other statutory or non-statutory bodies at the discretion of the Head of Planning Services

All District Members attending pre application discussions must have first attended a training session on conduct at pre application discussions. These training sessions will be organised by the Head of Planning Services on a regular basis in order to ensure that the integrity of the Member's decision making role is maintained.

HOW WILL THE MEETING BE CONDUCTED?

All pre organised pre application meetings will be conducted as follows:

- The Head of Planning Services, or their representative, will introduce the purpose of the meeting and advise how it will be conducted. **The officer will make it clear to the applicant/developer that the role of the Member is to listen to the discussion, identify issues that the developer will need to consider and to represent community interests but that it will not be possible for any Member to enter into negotiations or express a view on**

the proposal. Members will be advised by the officer as to the confidentiality status of the proposal.

- The Head of Planning Services, or their representative, will then Chair the meeting.
- Introductions will be made.
- The developer will present the proposal (the presentation having first been viewed by a senior planning officer and if necessary a legal officer). The presentation may also be supported by an organised site visit.
- Members will then have the opportunity to ask questions and seek clarification. They may alert the developer to what they perceive as the likely view or concerns of their constituents but **care will need to be taken that personal views are not expressed.**
- The Chair will then thank the applicant/developer at which point they will leave the meeting.
- Members will then advise officers of any concern they have with the proposal and any elements which they feel would benefit from negotiation with the developer. They will then be guided by professional officers as to what negotiations would be reasonable and align with LDF policy. Negotiations will be undertaken at a future date by professional officers only.
- The Chair will then conclude the meeting.

A planning officer will take notes of the meeting and record all those present, plus any issues identified. These notes will be circulated to the Member and officer attendees and, after confirmation of accuracy, they will be forwarded to the applicant and posted on the Council's website.

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Guidance Note For Dealing with Planning Applications at Meetings of the Planning Committee when Members disagree with the Officers' Recommendation

1. The Local Planning Authority has a duty under section 38 (c) of the Planning and Compulsory Purchase Act 2004 to determine applications in accordance with the development plan (adopted policy) unless material considerations indicate otherwise. The Council has an up to date Local Plan in place that was adopted on 11 December 2007 following external scrutiny at a Public Inquiry which reduces the likelihood of other material considerations carrying sufficient weight to justify setting aside the policies in the Local Plan.
2. Officers are trained and qualified to prepare balanced Committee reports and recommendations which comply with legal requirements, regulations and planning procedures as well as central government guidance and advice. It is their role to prepare written reports based upon the relevant policies, to assess any material considerations that might be put forward in support of a particular application against the relevant policies and make reasoned recommendations to the Planning Committee regarding each planning application.
3. Officers attending the Planning Committee need to be aware that Members are perfectly entitled to reach a different conclusion on the weight to be given to the material considerations and/or to particular policies.
4. Where one or more Planning Committee Member wishes to propose that a planning application should be determined contrary to the Officers recommendation the substance of the reasoning should be put forward and summarised by the mover in layman's terms. After this has been done, Officers will advise on the proposed motion. The reasons must be based on proper planning grounds with valid evidence which is sustainable at an appeal. Subject to these requirements the motion can be accepted, but must be summarised and clarified by the Chairman before being debated and voted on.
5. When there are Members' reversals of Officer recommendations at Committee it is essential that there is either a recording of the meeting or a clear written audit trail in the minutes of the reasons for and the source of the decision. In particular, the minutes should explain why members gave different weight to the Officers' assessment of the planning policy framework and any other material consideration(s).
6. Members' decisions on a planning application at the Planning Committee which are contrary to the Officers' recommendation, can in many circumstances be difficult to justify, and in exceptional circumstances may expose the Council to a legal challenge or a claim for an award of costs if there is an appeal against

the refusal of planning permission. The power to award costs has been extended to appeals dealt with by written representations. The Council's Solicitor attending the meeting and the Planning Managers will provide professional advice to the Committee where it is felt that Members' proposed decision may put the Council at such risk. Where the Committee is being asked to consider a large or complex application and Members are minded to approve or refuse the application contrary to the Officer's recommendation then it may be preferable to adjourn or defer the Committee meeting to provide Officer's with the opportunity to be able to advise Members accordingly.

7. A member who has concerns or queries regarding a particular recommendation may find it helpful to discuss their views with the Planning Officer(s) concerned at least one working day before the meeting so that appropriate advice can be given.

8. It is not the role of Officers to lead and/or provide reasons for members in arriving at a contrary decision, but as explained in paragraph 4 above, Officers through the Chairman need to be able to assist members in ensuring that the grounds for refusal and the reasons behind them are appropriate in relation to the policy framework and will offer suitable guidance on wording and the relevant policy where professionally possible.

9. Where the Committee reaches a decision contrary to the Officers' professional advice which results in a Local Public Inquiry or Informal Hearing, for practical and professional reasons, Officers may not be able to present the Council's case because their views on the planning application are on public record. To give the Council's decision the best prospects of success it will normally be appropriate to appoint external planning consultants to present the Council's case at the inquiry/hearing. This inevitably has cost implications, which may be substantial irrespective of the eventual outcome of the appeal.