



## **PLANNING COMMITTEE**

**Thursday, 15 October 2020**

<b>REPORT TITLE:</b>	<b>PROTOCOLS RELATING TO DETERMINATION OF PLANNING APPLICATIONS</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF REGENERATION AND PLACE</b>

### **REPORT SUMMARY**

The purpose of this report is to seek approval for Protocols relating to the determination of Planning Applications.

The first Protocol relates to the criteria to be applied as to when the Director of Regeneration and Place shall arrange for an application to be taken out of officer delegation and be considered by the Planning Committee or Strategic Applications Sub-Committee for determination due to it being inappropriate to exercise delegated powers having regard to the public representations received and/or consultee responses.

The second Protocol relates to the right for persons who are not members of the Planning Committee to speak at meetings of the Planning Committee or the Strategic Applications Sub-Committee. Approval is also sought for a third protocol being Guidance on the right to speak at Planning Committee and Strategic Applications Sub-Committee.

### **RECOMMENDATION/S**

The Planning Committee is requested to agree:

1. the "Criteria to be applied by the Director for removing an application from officer delegation and referring the matter to Planning Committee or the Strategic Applications Sub-Committee" as set out in Appendix 1 to this Report;
2. the "Protocol on the Right to Speak at Wirral Council Planning Committee and Strategic Applications Sub-Committee" as set out in Appendix 2 to this report; and
3. the "Guidance on the right to speak at Planning Committee and Strategic Applications Sub-Committee" as set out in Appendix 3 to this report.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 It is good practice that appropriate Protocols be adopted which clearly set out:
- a) when a decision is to be taken out of the Scheme of Officer Delegation; and
  - b) when a member of the public, or Members who are not Members of the Committee, have the right to address a meeting of the Planning Committee (or relevant Sub-Committee).

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 It would be possible not to have defined criteria for the Director's determinations regarding the removal of applications from the officer scheme of delegation. However, this would lead to uncertainty for members of the public as to how, and by whom, any particular application is to be decided. It is therefore considered that for the purposes of certainty and clarification, specific criteria for such determinations should be agreed by the Planning Committee to be applied by the Director
- 2.2 The right to allow public speaking at a Planning Committee (and a relevant Sub-Committee) is at the discretion of the Council. Most local planning authorities do allow public speaking. Some allow members who are not members of the Committee to speak, as well as third party objectors, whilst some limit such right to members. Allowing some public speaking at Planning Committees generally enhances public confidence and reduces direct lobbying. However, where public speaking is allowed, clear protocols should be established regarding who is allowed to speak, including provisions for applicants, supporters, ward councillors and third-party objectors

### **3.0 BACKGROUND INFORMATION**

#### **Criteria for taking matters out of the Scheme of Officer Delegation**

- 3.1 The new Council Constitution approved by full Council on 28 September 2020 contains a provision with regard to the Strategic Applications Sub-Committee. This is a Sub-Committee of between six (6) and nine (9) members of the Planning Committee, politically balanced, with responsibility for making decisions regarding certain categories of planning applications, including amongst other matters,
- “any application where the Director responsible for the planning service considers it inappropriate to exercise delegated powers having regard to the public representations received and consultee responses...”
- 3.2 It is advisable with regards to the determination of planning applications that the public has clear expectations and understanding of how an application is to be determined and who will be the decision maker. Therefore, it is recommended that criteria be agreed, to be applied as to when a Director may consider it inappropriate to exercise delegated powers having regard to the public representations received and/or consultee responses.

3.3 Under the previous Scheme of Delegation to Officers it was provided that applications would be taken out of officer delegation where, within the prescribed consultation period there was:  
(a) a petition of 25 signatories or over, or 15 individual letters of objection, and  
(b) the officer was recommending approval of the application.

3.4 Under the previous Scheme of Delegation to Officers if, within the prescribed consultation period, there was:  
(a) a petition of 25 signatories or over, or 15 individual letters of objection, and  
(b) the officer was recommending refusal of the application;

the application would remain under officer delegated power. The lead petitioner would be informed of the recommendation to refuse under delegated powers

3.5 In order to promote effective decision making and to ensure that meetings are managed efficiently, it is recommended that the criteria to take a matter out of officer delegation be amended as follows:

*“Applications will be taken out of officer delegation where, within the prescribed consultation period, there is:*

*(a) a petition of 50 signatories or over, or 15 individual letters of objection, and  
(b) the officer is recommending approval of the application.*

*If the application is being recommended for refusal the application shall remain under officer delegated power. The lead petitioner will be informed of the recommendation to refuse under delegated powers.*

*In the event that a lead petitioner does not register their intention to speak to the item at Committee, the matter will be taken out of the Committee agenda and revert back to Officer Delegation”*

3.6 The previous Scheme of Delegation to Officers also set out that any member could request, subject to there being sound planning reasons for doing so, that a matter be removed from officer delegation and be determined by the Planning Committee. Given that this practice has been long established and has met with general approval by the Planning Committee, members and the public it is recommended that this process should continue in principle. However in order to promote effective decision making and to ensure that meetings of the Committees are managed efficiently, it is now recommended that the criteria as to when a Member can take a matter out of officer delegated decision be amended as follows:

*“Applications where any Elected Member has, prior to the last date for comment as published on an application, made a written request to the Director that the application be referred to the Planning Committee and has given sound and reasonable planning grounds for that request. The Director may, at their discretion, refuse such a request if they consider that the necessary grounds are not substantiated, or if the Director considers that the matter is not of such significance that it must be taken out of officer delegation. In such circumstances the Director shall give the Member written reasons for the refusal.”*

- 3.7 The criteria shall also enable matters to be taken out of officer delegation where there is a possibility that a member of the public may reasonably consider that an officer may be biased in their determination. The criteria shall therefore include the following

*“Any personal/private application made by any Member of the Council, or any member of staff employed in the Council’s Planning Service.*

*Any application where an Elected Member is involved in any capacity as an agent or consultant where at least one objection has been received.”*

### **Right to Speak at Planning Committee and Strategic Applications Sub Committee meetings**

- 3.8 With regards to the public right to speak at Planning Committees, Local Planning authorities adopt differing practices. The Council has to date adopted a process of enabling spoken representations at Planning Committee meetings by Ward Councillors where that Ward Councillor has asked for a matter to be taken out of the scheme of delegation for determination by the Planning Committee. In addition, when an application before the Committee for decision has a related petition of 25 signatories or over, a spokesperson for the petition has been given the right to address the Committee. The spokesperson may be the lead petitioner, their agent, or their ward councillor. The applicant or their agent has also been given the right to address the Committee in respect of their application,
- 3.9 Ward Councillors have also been able address the Committee either as a representative of the applicant or objectors or, distinctly, as the ward councillor to indicate their own view as either in support, opposed, or neutral on the terms of the application. A Ward Councillor may however only speak in one role to the Committee
- 3.10 It is recommended that these same rights to speak should be adopted for matters which come before either the Planning Committee or the Strategic Applications Sub-Committee. It is recognised that, due to the Covid 19 pandemic and the restrictions imposed by central government relating to social distancing, it may currently be more difficult for members of the public to collect signatures on a petition. Signatures can however currently be collected via an “E petition” (available on the Council’s website). In addition, it is now proposed that, for those who have difficulties accessing an e petition, such persons be encouraged to request that a Ward Councillor seeks to take the matter out of delegation and addresses the Committee on their behalf. It is also proposed that a Ward Councillor may request the Chair to exercise their discretion to allow the relevant member of the public to address the Committee (or Sub-Committee)
- 3.11 It is also proposed that the Chair may in addition exercise their discretion to enable statutory consultees to speak at Committee.
- 3.12 The Planning Committee is therefore requested to formally agree the “Director’s Criteria for Applications to be determined by the Planning Committee and the Strategic Applications Sub-Committee” as set out in Appendix 1 to this Report, the “Protocol on the Right to Speak at a Planning Committee and a Strategic Applications Sub-Committee” as set out in Appendix 2 to this Report and the

“Guidance on the right to speak at Planning Committee and Strategic Applications Sub-Committee” as set out in Appendix 3 to this report.

#### **4.0 FINANCIAL IMPLICATIONS**

4.1 There are no financial implications arising from the recommendations within this report. All the recommendations can be implemented within current budgets.

#### **5.0 LEGAL IMPLICATIONS**

5.1 It is good practice for members of the public to have clarification as to how planning applications will be determined. The Local Government Association “Guidance on Probity in Planning” advises that planning decisions can be controversial and states that “The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.” Therefore, it is appropriate that criteria be agreed for how the Director will exercise their determination in circumstances where they consider it inappropriate to exercise delegated powers having regard to the public representations received and consultee responses.

5.2 Whilst there is no specific legal requirement to enable members of the public to speak at Planning Committee (or relevant Sub-Committee) it is good practice to do so. Where this right is given, “Guidance on Probity in Planning” advises that clear protocols should be established including provision for applicants, supporters, ward councillors and third-party objectors. In addition, the right to speak formalises an Article 6 Human Rights Act 1998 right to a fair and public hearing.

5.3 Appendix 4 to this report set out the composition and terms of reference of Planning Committee and the Strategic Applications Sub Committee.

#### **6.0 RESOURCE IMPLICATONS: ICT, STAFFING AND ASSETS**

6.1 The only significant implications are that enhanced public participation rights may slightly increase the length of Planning Committees. This can be managed within current resources.

#### **7.0 RELEVANT RISKS**

7.1 It is good practice to formally adopt the proposed Protocols. The only significant risk is that removing matters from officer delegation and giving the right for public speaking at Committee meetings may increase the length of time that it takes for the Planning Committee or the Strategic Applications Sub-Committee to determine planning applications. This can be mitigated by skilled chairing of the meeting.

#### **8.0 ENGAGEMENT/CONSULTATION**

8.1 The proposals within this report will increase clarity in the decision-making procedures and enhance the ability of members of the public to engage with members in terms of the determination of planning applications.

## 9.0 EQUALITY IMPLICATIONS

9.1 There are no equality implications directly related to this report,

## 10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no implications related to this report

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## APPENDICES

**Appendix 1** – Director’s Criteria for Applications to be determined by the Planning Committee and the Strategic Applications Sub-Committee.

**Appendix 2** –Appendix 2- Protocol for the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings.

**Appendix 3**- Guidance on the right to speak at Planning Committee and Strategic Applications Sub-Committee meetings.

**Appendix 4** – The composition and terms of reference of Planning Committee and the Strategic Applications Sub Committee.

## BACKGROUND PAPERS

The Local Government Association Guidance on Probity in Planning

The Council’s Constitution

## SUBJECT HISTORY (last 3 years)

<b>Council Meeting</b>	<b>Date</b>
Council AGM	28 September 2020

## **Appendix 1 – Director’s Criteria for Applications to be determined by the Planning Committee or the Strategic Applications Sub-Committee.**

In this document reference to Committee shall be construed (as appropriate) to either the Planning Committee or the Strategic Applications Sub-Committee.

In this document references to the Chair shall be construed (as appropriate) to either the Chair of the Planning Committee or the Chair of the Strategic Applications Sub-Committee.

(i) Applications where any Elected Member has, prior to the last date for comment as published on an application, made a written request to the Director that the application be referred to the Planning Committee and has given sound and reasonable planning grounds for that request. The Director may, at their discretion, refuse such a request if they consider that the necessary grounds are not substantiated, or if the Director considers that the matter is not of such significance that it must be taken out of officer delegation. In such circumstances the Director shall give the Member written reasons for the refusal.

(ii) Applications that, within the specified consultation period attract

a) one or more petitions of objection containing 50 or more signatories from individual households or

b) 15 individual objections in writing

**unless**

the application is being recommended for refusal, in which case, the application shall remain under officer delegated powers. The lead petitioner will be informed of the recommendation to refuse under delegated power.

In order to promote effective decision making and to ensure that meetings of the Committees are managed efficiently, in the event that a lead petitioner or ward councillor do not register their intention to speak to the item at Committee the matter will be taken out of the Committee agenda and revert back to Officer Delegation.

(iii) Any personal/private application made by any Member of the Council, or any member of staff employed in the Council’s Planning Service.

(iv) Any application where an Elected Member is involved in any capacity as an agent or consultant where at least one objection has been received

## **Appendix 2- Protocol for the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings**

In this protocol reference to Committee shall be construed (as appropriate) to either the Planning Committee or the Strategic Applications Sub-Committee.

In this protocol references to the Chair shall be construed (as appropriate) to either the Chair of Planning Committee or the Chair of Strategic Applications Sub-Committee.

1. When an application before the Committee for decision has a related petition of objection of 50 signatories (or more) or 15 (or more) individual letters of objection,
  - (i) a spokesperson for the objectors is given the right to address the Committee. The spokesperson may be the lead petitioner, a representative of the written objectors, their agent, or their ward councillor.
  - (ii) the applicant or their agent will be given the right to speak in respect of their application whether or not the petitioner or objectors' spokesperson has exercised their own rights to speak.

When given the opportunity to speak the spokesperson, agent or applicant shall have a maximum of 5 minutes to make their representations to the Committee.

2. It will be a matter for the Chair (where appropriate with prior consultation with ward councillors) to determine who should speak for objectors if more than one objector has requested to speak. The Guidance on Speaking at Committee contains more details on this process.
3. Where there is a second petition the Chair will generally exercise a discretion to allow one spokesperson for the additional petition to speak to provide the Committee with further information other than what has already been said. A further two minutes is allowed for secondary petitioners to make representations to the Committee.
4. A Ward Councillor may address the Committee on any application they have asked to be removed from delegation. There shall be no time limit on Ward Councillors when they address the Committee.
5. If a statutory consultee wishes to make representations on any application before the Committee, they shall be able to do so. They will be given a maximum of 3 minutes to address the Committee.
6. All time allocations referred to in this protocol do not include the time spent in answering any questions the Committee may raise with the speaker.
7. Where, due to Covid 19 restrictions on social distancing, a member of the public informs the Council that they have experienced difficulties in drawing up a petition they shall be referred by Planning Officers or Committee Services officers to their Ward Councillor. In such circumstances the Ward Councillor may choose to seek to take the matter out of delegation and speak to the matter at Committee.
8. If the matter is referred to Committee the applicant or agent shall then have the right to speak for a maximum for 5 minutes. Alternatively, the Ward Councillor may, prior

to the relevant meeting of the Planning Committee, ask the Chair to exercise their discretion to enable the “potential lead petitioner” to speak at Committee. Any member of the public, applicant or agent addressing the Committee in such circumstances shall be given a maximum of 5 minutes to do so.

9. For clarification, Members of the Committee have the right to speak at Committee meetings as set out in the Councils Standing Orders

## **Appendix 3- Guidance on the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings**

In this protocol reference to Committee shall be construed (as appropriate) to either the Planning Committee or the Strategic Applications Sub-Committee.

In this protocol references to the Chair shall be construed (as appropriate) to either the Chair of Planning Committee or the Chair of the Strategic Applications Sub-Committee.

If you are thinking of speaking at the committee meeting, please read the following guidance:

### **1. Who can speak at the Planning Committee meeting?**

When an application before the Committee for decision has a related petition of objection of 50 or more signatories or 15 or more individual letters of objection,

(i) a spokesperson for the objectors is given the right to address the Committee. The spokesperson may be the lead petitioner, a representative of the written objectors, their agent or their ward councillor.

(ii) the applicant or their agent will be given the right to speak in respect of their application whether or not the objectors or petitioners have exercised their own rights to speak.

### **2. If I am an objector and an item goes to Committee how do I indicate that I wish to have a right to speak**

In addition to applications where there is a valid petition of 50 or more signatories, applications will also go before Committee where there are 15 or more written objections from different households. If you want to be considered for speaking at Committee please therefore leave an email address with any objection so that you can be contacted if this trigger figure is reached.

Once written objections reach the trigger point (15 objections) you will be contacted by a Committee Services officer and asked to confirm if you want to speak

It will then be a matter for the Chair (where appropriate with prior consultation with ward councillors) to determine who should speak for objectors if more than one objector has requested to speak.

### **3. What if I find it difficult, due to Covid 19 social distancing restrictions, to get 50 signatories for a petition.**

In these circumstances you should approach your Ward Councillor and request that they consider requesting that the matter be taken out of delegation and be considered by the Planning Committee. If the Ward Councillor does so and the matter is referred to Committee, they can either speak on your behalf at Committee or request the Chair of the Committee to exercise their discretion and enable you to speak. Please note that if the ward councillor speaks on your behalf, or if the Chair allows you to speak, the applicant or their agent will be given the right to speak in response.

### **4. How many people are allowed to speak?**

In circumstances where more than one petitioner / objector wishes to speak the chair will invite you to nominate one spokesperson. If there is a second petition for or against, then the Chair will generally exercise a discretion to allow one spokesperson for the additional petition to speak to add to what has already been said. See below on the time allocated to speakers

### **5. How much time is allowed?**

A total of five minutes is allowed for the lead petitioner. A further two minutes is allowed for secondary petitioners. The applicant or their agent will have five minutes to respond. Consultees will have three minutes to address the Committee

This time allocation does not include time spent answering the committee's questions.

### **6. Will I be asked questions by the committee?**

Yes, but only questions of clarification on what has been said. You may decline to answer questions

### **7. What time should I arrive if I wish to speak?**

You should arrive no later 5.45pm and report to the democratic services officer giving your name and the item you wish to speak on

### **8. What is the order of the committee procedure?**

The chair will take items dependant upon the number of people in attendance.

1. The application is introduced by the Chair.
2. Presentation of report by planning officer.
3. The Chair will call upon the spokesperson for a petition objecting to the proposal to speak. Committee members may ask questions of clarification.
4. The Chair will call upon the spokesperson for the objectors to the proposal to speak. Committee members may ask questions of clarification.
5. If there is a petition in support of the application the Chair will call on them to speak. The Committee members may ask questions of clarification.
6. The Chair will call upon the applicant or their agent to speak. The Committee members may ask questions of clarification.
7. The Chair may ask a ward councillor to speak and Committee members may ask questions of clarification.
8. The Chair will ask if any consultees wish to address the Committee. Committee may ask questions of clarification.
9. The planning officer will comment on any factual matters raised by the speakers.
10. The Committee will debate the applications and ask questions to officers.
11. The Committee will vote on the application and reach a decision.
12. After each decision the Chairman will inform the meeting of the decision.

## **Appendix 4 - The composition and Terms of Reference of Planning Committee and the Strategic Applications Sub Committee.**

### **PLANNING COMMITTEE (DEVELOPMENT CONTROL)**

#### **10.1 Composition:**

Eleven (11) Members of the Council, subject to proportionality, which may be altered to accommodate the overall political balance calculation. There shall be no power to co-opt.

#### **10.2 Terms of Reference**

The principal role of the Planning Committee is to act as the administrative committee responsible for making decisions as local planning authority on planning applications, development control and similar regulatory matters, which are more particularly described as *Functions relating to town and country planning and development control* and related matters as set out at Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

The Committee is charged by full Council to fulfil those functions:

- (a) to consider and determine applications submitted under the Planning Acts for planning permission, listed building consent, and reserved matters pursuant to major planning applications;
- (b) to consider and determine applications for the display of advertisements submitted under the Town and Country Planning (Control of Advertisements) (England) Regulations;
- (c) to determine whether prior approval applications for the construction, installation, alteration or replacement of telecommunications masts submitted under Part 24 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 should be granted or refused;
- (d) related matters including but not limited to:
  - (i) applications for 'hedgerow removal' (Hedgerow Regulations 1997, as amended);
  - (ii) applications to undertake works to trees subject to a Tree Preservation Order or within a Conservation Area (Town and Country Planning Trees Regulations 1999, as amended);
  - (iii) applications for remedial notices in respect of high hedges (Anti Social Behaviour Act 2003, as amended);
  - (iv) applications for Hazardous Substances Consent (Planning Hazardous Substances Act, 1990, as amended);
  - (v) the obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976;
  - (vi) powers related to Commons Registration;

- (vii) functions relating to public rights of way;
  - (viii) the licensing and registration functions relating to the New Roads and Street Works Act 1991 and the Highways Act 1980; and
  - (ix) functions relating to Town and Village Greens;
- (e) to exercise any other function of the Council under the Planning Acts and related legislation, whether as a local planning authority or otherwise, which may be referred to it by the Director for Economic and Housing Growth or other officer authorised by him/her.

### 10.3 **Methodology**

The process and meetings of the Committee will be conducted in accordance with the rules set out in Part 4(4) of this Constitution but shall also be subject to:

- (a) the Members Planning Code;
- (b) no member of the Committee may participate in the debate or vote in the meeting until or unless that member has attended the mandatory planning training prescribed by the Council;
- (c) the Planning Committee protocol for public engagement; and
- (d) the scheme of delegation for planning matters.

### 10.4 **Strategic Applications Sub-Committee**

A Sub-Committee of between six (6) and nine (9) members of the Planning Committee, politically balanced, with responsibility for making decisions regarding:

- (a) the implications of major developments outside of the Borough that could have an impact on local residents; and
- (b) the following categories of applications for planning permission:
  - (i) large-scale major developments (defined by the Ministry for Housing, Communities and Local Government (MHCLG) as those of 200 houses or more or 10,000 square metres of non-residential floor space) which, by their nature, (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance;
  - (ii) planning applications for mineral extraction or waste disposal, other than small scale works which are ancillary to an existing mineral working or waste disposal facility;
  - (iii) significant applications by Wirral Borough Council to develop any land owned by the Council, or for development of any land by the Council or by the Council jointly with any other person (Regulation 3 applications)
  - (iv) applications which, if approved, would represent a significant departure from the policies of the statutory development plan, where they are recommended for approval;

(v) any application where the Director responsible for the planning service considers it inappropriate to exercise delegated powers having regard to the public representations received and consultee responses; and

(c) consideration of documents relating to the Local Development Framework and advise the Economy, Regeneration and Development Committee (or Housing Committee) where appropriate.