
CONSTITUTIONAL AMENDMENT AND PROPOSED MEMBER PROTOCOL FOR INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS FOR PROPOSED DEVELOPMENTS IN THE BOROUGH

(Report of the Acting Head of Planning & Building Control)

1. Summary of Proposals

To amend the Constitution and adopt a protocol for the engagement of Members in pre-application planning discussions and to provide a clarity and fairness to the process, making it accountable. This would operate in line with current good practice advice.

2. Recommendations

The Committee is asked to RECOMMEND that

- 1) the protocol and information at Appendix 1 be adopted for use and added to the Constitution's associated documents;**
- 2) the implementation of the protocol be reviewed jointly by Officers and Members after 12 months;**
- 3) training for all Members and Officers involved be provided; and**
- 4) that the resultant amendments to the Constitution, proposed at Appendix 2, be adopted.**

3. Financial, Legal, Policy, Risk and Sustainability Implications

Financial

- 3.1 Minimal additional resources would be required as the proposed procedures are an extension of the current Officer practice. These can be absorbed from within the existing budgets.

Legal

- 3.2 The proposals fall within the following legislative framework:

Town & Country Planning Act 1990 (as amended)
Planning & Compensation Act 1991 (as amended)
Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

Anti-social Behaviour Act 2003
Regulation of Investigatory Powers Act 2000
Human Rights Act 1998
Data Protection Act 1998
Freedom of Information Act 2000
Local Government Act 1980
Highways Act 1980

Policy

- 3.3 The Constitution would be altered and the protocol would be adopted as formal Council procedural policy, and would complement rather than conflict with any existing policy.

Risk

- 3.4 Providing that all advice to Members enshrined within the Constitution and Code of Conduct are adhered to, there are no additional risks perceived. Indeed the process could be improved by having Member involvement at an earlier stage.

Sustainability / Environmental Impact

- 3.5 Pre-application discussions include sustainability and environmental issues.

Report

4. Background

- 4.1 Members of the Council are currently not involved in pre-application discussions, however pre-application discussions without Members is normal practice. Pre-application discussions are generally carried out between Officers and agents acting on behalf of developers/landowners etc. The discussions relate to the specific site and development proposal in question, and seek advice (given without prejudice to the outcome of any subsequently submitted application) on the planning framework for the site, the likely acceptable uses, styles, designs etc for the site and the likelihood of gaining a favourable Officer recommendation on any future application. This allows for detailed matters such as design features and planning obligation requirements to be discussed and negotiated outside the time constraints of a submitted planning application, and for proposals to be re-designed, amended or altered in order to arrive at what Officers perceive to be the best possible solution for the site in the circumstances. Such discussions are led for the Council by the Development Control Case Officer, and usually there is a single point of contact in the planning agent for the developer, although other personnel are involved on both sides as appropriate. From a Council perspective, this can include

- colleagues from teams such as landscape, legal, leisure, environmental health and others, as well as County Council colleagues. The information required in order to respond to requests for pre-application advice, and an indication of the service that this Council provides, can be found in the fees and charges leaflet that is available at planning reception and published on the Council website. This is as agreed by Members at executive committee and full council in December 2008.
- 4.2 The pre-application process can be formalised in a Planning Performance Agreement (PPA) in cases where the development proposals are very large and significant. These set out the stages of the discussion process, personnel involved, timescales and responsibilities, and agrees fees to be paid to the Council to go towards the costs incurred in advising. Procedural advice on these is published by the government agency ATLAS (Advisory Team for Large-scale Applications). To date, this Council has not been involved in a PPA.
- 4.3 Good practice guidance states that more should be achieved at the pre-application stage of the planning process. Initially, this related to large scale major developments, but as time has progressed it has begun to encompass much smaller schemes too, as well as controversial or unusual proposals.
- 4.4 Guidance includes a drive towards more and better community involvement, especially early on in the process, and the inclusion of Members as community representatives. Member engagement in the pre-application stage of the planning process has generally been cautioned or avoided in the past, however the more recent guidance suggests that this view should be revisited and reconsidered as part of the engagement of people within the planning process at all levels and stages.
- 4.5 There is a concern amongst some Members about the lack of involvement in and knowledge of the process of shaping their places, communities and spaces, at the pre-application stage. This includes concerns about lack of Member involvement in negotiations for Planning Obligation requirements.
- 4.6 There has also been a general concern amongst Members and planners relating to the perceived role of Members in the process, their matters of Interest and prejudice, especially when Members sit on a determining committee such as Planning Committee.
- 4.7 Developers and those acting on their behalf have also often expressed concern that even where they have engaged with Officers on a proposed development, if there has been no Member involvement there is a possibility that their proposals might be thwarted at the seemingly final hurdle of the Planning Committee

meeting, once time and money has been put into the process of designing a proposal. Often in such cases, issues are raised by Members that could easily have been resolved if identified early in the process.

- 4.8 It is in response to these issues that this report has been compiled, following informal discussions at PAP.

5. **Key Issues**

Transparency and clarity in terms of process

- 5.1 It is important that if Members are to become more involved in the pre-application process, there is a clear framework for such involvement, so that there is accountability and fairness built in. This is necessary for all parties to the process, be they professionals, Officers, Members or other interested parties. The conduct of all those involved must also adhere to appropriate guidelines in order that the later stages of the process are not prejudiced.
- 5.2 It is intended that any protocol that is adopted would be for use by all Members, regardless of which ward they represent or on which committees they sit. It is also recommended that if a protocol is adopted, the Development Control Manager and Head of Planning and Building Control arrange for a training session for Members and Officers to ensure that the process is clearly understood and to answer any Member queries. It is suggested by Officers that such training would be a necessary prerequisite to Member involvement in pre-application discussions.
- 5.3 Guidance for Members engaging in pre-application discussions is available in a number of sources, and the documents noted at section 5 of appendix 1 are useful to refer to. In particular, reference could be made to 'Positive Engagement', which includes some handy hints and tips for Councillors.

Proposed document for adoption

- 5.4 The protocol to be found at Appendix 1 is proposed for adoption and subsequent implementation by Members and Officers. Its adoption would result in it being included in the Constitution's associated documents, as a matter of public record. The Protocol contains guidance on Member conduct.
- 5.5 Section 1 of Appendix 1 details the proposed criteria for Member involvement in pre-application discussions, which would be used to determine whether an enquiry is one where Members should be involved in discussions. This criteria allows for Member involvement in a significant number of applications. However, to continue to have a manageable process it is pointed out that the threshold for

Member involvement and other issues will need to be reviewed after the system has been running for 12 months. This is covered by Recommendation 2 of this report.

- 5.6 Section 2 of Appendix 1 sets out a stage by stage procedure giving a sequence of events to be followed when requests for pre-application advice are received, in order that they can be dealt with consistently and fairly. Section 2 points out that pre-application meetings cannot be arranged around the availability of Members because of deadlines and the needs of applicants who are paying for the Service.
- 5.7 If a Member is approached for pre-application advice, then the contact details should be passed to the Development Control Manager for the enquiry to be dealt with as appropriate. Otherwise, enquiries will reach the Development Control team directly for processing.
- 5.8 When the Development Control Case Officer receives a case, they will produce a summary of the proposed development and use the checklist at Section 3 of Appendix 1 to establish who should be consulted. This will then be circulated to the identified parties to be involved in discussions.
- 5.9 Section 4 of Appendix 1 provides the key information for Members regarding the process, and how to engage within it. At Section 5 of Appendix 1, a list of reference material can also be found.
- 5.10 Section 5 of Appendix 1 refers to useful reading.

Timescales for implementation and review

- 5.11 In view of the need for training it is proposed at this stage that the new protocol comes into effect on 1 October 2009.
- 5.12 It is suggested that the protocol be implemented for an initial trial period, and that it is then reviewed after 12 months, in order to allow for ongoing monitoring and improvement.
- 5.13 If Members support Recommendation 1 and adopt this protocol, some minor alterations are required to the Constitution to prevent any contradictions from being introduced. Therefore Appendix 2 shows the proposed consequential changes to the Constitution.

6. **Other Implications**

- Asset Management - No perceived implications
- Community Safety - This is a material consideration in the planning process, so needs no separate consideration here
- Human Resources - No perceived implications
- Social Exclusion - This is a material consideration in the planning process, so needs no separate consideration here.

7. **Lessons Learnt**

This is a new procedure which follows the advice and case studies of others. Therefore, whilst learning some lessons others will come from the proposed review, after which the protocol can be evaluated and changed if it is considered necessary.

8. **Background Papers**

See reference list at Section 5 of Appendix 1

9. **Consultation**

There has been no consultation other than with relevant Borough Council Officers.

10. **Author of Report**

The author of this report is Ailith Rutt (Development Control Manager), who can be contacted on extension 3374 (e-mail: ailith.rutt@redditchbc.gov.uk) for more information.

11. **Appendices**

- Appendix 1 - Proposed document for inclusion as a Constitution Associated Document.
- Appendix 2 - Proposed consequential changes to the Constitution.