

## **MALDON DISTRICT COUNCIL PLANNING APPEALS PROTOCOL**

### **1. ROLE OF MEMBERS IN COMMITTEE PLANNING APPEALS**

#### **1.1 Householder Appeal**

- 1.1.1 The Member role is a collective Committee responsibility given that the critical factor with householder appeals, which do not involve providing any additional supplementary statements, is to ensure that the Committee's reasons for overturning Officer report recommendations are clear and based on sound planning reasons.

#### **1.2 Member Involvement in Written Representation, Informal Hearing and Public Inquiry Appeals**

- 1.2.1 Where the Committee overturns an Officer recommendation, including where the Constitutional Brake has been invoked, in addition to agreeing the reasons for refusal the Committee will be asked to identify which Member(s) should be involved with any subsequent appeal to help strengthen the defence of the Council's case, and even appear at an inquiry as part of the Council's team. The Member(s) nominated by Committee to engage with any subsequent appeal may include the Chairperson or Vice-Chairperson, or another Member having proposed or supported the decision. Members will need to be aware that officers may or may not support the reason(s) for refusal depending on whether they consider that there will be conflict between the reason(s) and Officers' professional opinion having regard to the local plan and any other material considerations as set out in the Officers report. In this respect, Officers will need to be aware that the services of an external consultant would be sought in a timely manner and in accordance with procurement rules.
- 1.2.2 Where Members are nominated it is important that they understand the nature of the specific role as set out below, and that their appearance at a hearing or inquiry will be wholly as a representative of the Council, as a whole, to support the case made around the Committee's decision. In cases where an external consultant is procured, they would work with that consultant, with the support of Officers.

#### **1.3 Written Representation Appeal**

- 1.3.1 Written representation appeals are the quickest and simplest appeals requiring Member involvement. They require a Statement of Case to be prepared and a site visit with the Planning Inspector but these appeals are usually for smaller scale development such as a single dwelling or change of use.
- 1.3.2 Where the Committee overturns the Officer recommendation the Nominated Member(s) will be engaged with the following:
- A letter will be sent to advise the nominated Member(s) about the appeal, the name of the case officer and/ or planning consultant and the date the Statement of Case is due;
  - The Nominated Member(s) should liaise with the Case Officer/ consultant, as required, to discuss the policies used to refuse the application, the content to provide the outline for the Council's Statement and cost claim (if relevant). Members' comments need to be made in writing to the Case Officer/consultant in order to ensure there is a clear audit trail of the input provided by the Nominated Member(s).
  - A written draft Statement of Case, with any necessary appendices will then be prepared by the Case Officer/consultant.

- The Nominated Member(s) will review the Council's draft Statement and make amendments where required and send back to the Officer/consultant.
- A final check by the Case Officer/consultant and/or Senior Management of any Nominated Member(s) amendments will be made to ensure the contents are focused on the reasons for refusal given at Committee and do not inadvertently, in the quest to defend the Council's decision, imply new reasons for refusal. In the event of any concerns of this nature, the Senior Manager will speak to the Nominated Member(s) and confirm in writing any subsequent changes that would be necessary to ensure the Statement of Case stays within its remit.
- The Nominated Member(s) will be advised of the date of the site visit in order to accompany the Case Officer/consultant and Planning Inspector.
- The Nominated Member(s) will be notified of any internal consultation involving the Chair of the relevant Planning Committee undertaken prior to any Emergency Action decision being taken under the Scheme of Delegation (General Powers), e.g. response to a time-limited request from the Planning Inspectorate.

#### **1.4 Informal Hearing Appeal**

##### **1.4.1 Where the Committee overturns the recommendation the Nominated Member(s) will be engaged with the following:**

- A letter will be sent to advise the Nominated Member(s) about the appeal, the name of the case officer and/or planning consultant and the date the Statement of Case is due;
- The Nominated Member(s) should liaise with the Case Officer/ consultant if required, to discuss the policies used to refuse the application, the content to provide the outline for the Council's Statement of Case and cost claim (if relevant). Member comments, where required will need to be made in writing and forwarded to the Case Officer/ consultant in order to ensure there is a clear audit trail of the input provided by the Nominated Member(s).
- A written draft Statement of Case, with any necessary appendices will then be prepared by the Case Officer or consultant.
- The Nominated Member(s) will review the Council's draft Statement and make amendments where required and send back to the Officer/consultant.
- A final check by the Case Officer/consultant and/or Senior Management of any Nominated Member(s) amendments will be made to ensure the contents are focused on the reasons for refusal given at Committee and do not inadvertently, in the quest to defend the Council's decision, imply new reasons for refusal. In the event of any concerns of this nature, the Senior Manager will speak to the Nominated Member(s) and confirm in writing any subsequent changes that would be necessary to ensure the Statement of Case stays within its remit.
- Prior to the hearing, a meeting will be held between the Member(s) and Case Officer/consultant, alongside any external witnesses and solicitor (where necessary) to consider the issues/ tactics and the appellant's case.
- The Nominated Member(s) will attend the Informal Hearing either in an observer capacity, or as part of the Council team.
- The Nominated Member(s) will be advised of the date of the site visit in order to accompany the Case Officer/ consultant and Planning Inspector.

- The Nominated Member(s) will be notified of any internal consultation involving the Chair of the relevant Planning Committee undertaken prior to any Emergency Action decision being taken under the Scheme of Delegation (General Powers), e.g. response to a time-limited request from the Planning Inspectorate.

## **1.5 Public Inquiry**

### **1.5.1 Where the Committee overturns the recommendation the nominated Member(s) will be engaged with the following:**

- A letter will be sent to advise the Nominated Member(s) about the appeal, the name of the Case Officer and/or planning consultant and the date the Statement of Case is due.
- The Nominated Member(s) should liaise with the Case Officer/ consultant, to discuss the policies used to refuse the application, the content to provide the outline for the Council's Statement of Case and cost claim (if relevant). Member comments, where required, will need to be made in writing and forwarded to the Case Officer/ consultant to ensure there is a clear audit trail of the input provided by the Nominated Member(s).
- A written Statement of Case, with any necessary appendices will then be prepared by the Case Officer or consultant.
- The Nominated Member(s) will review the Council's draft Statement and make amendments where required and send back to the Officer/consultant.
- A final check by the Case Officer/consultant and/or Senior Management of any Nominated Member(s) amendments will be made to ensure the contents are focused on the reasons for refusal given at Committee and do not inadvertently, in the quest to defend the Council's decision, imply new reasons for refusal. In the event of any concerns of this nature, the Senior Manager will speak to the Nominated Member(s) and confirm in writing any subsequent changes that would be necessary to ensure the Statement of Case stays within its remit.
- Prior to the Public Inquiry, a meeting will be convened by the Council's legal representative between the Nominated Member(s), the Case Officer/consultant and any external witnesses / experts (where necessary) to consider the issues / tactics and the appellant's case.
- The Nominated Member(s) will attend the Public Inquiry either in an observer capacity, or as part of the Council team in presenting the case.
- The Nominated Member(s) will be advised of the date of the site visit in order to accompany the Case Officer/consultant and Planning Inspector.
- The Nominated Member(s) will be notified of any internal consultation involving the Chair of the relevant Planning Committee undertaken prior to any Emergency Action decision being taken under the Scheme of Delegation (General Powers), e.g. response to a time-limited request from the Planning Inspectorate.

## **2 MANAGEMENT OF THE PLANNING APPEAL PROCESS**

### **2.1 In managing the Planning Appeal process in the Council's control the Assistant Director: Planning and Implementation will:**

- determine on a case-by-case basis, as early as possible where it would be necessary to either seek the Nominated Member(s) and/or an external

planning consultant to represent the Council at either an Informal Hearing or Public Inquiry.

- Where unreasonable behaviour by the appellant is considered to have taken place, wherever practical, seek to recover the Council's defence costs from appellants in preparing for and undertaking an appeal.
- Where Nominated Member(s) have not been selected, reserve the right to request Ward Member assistance in circumstances where local knowledge is paramount and invaluable to the appeal, including appeals that may arise from planning enforcement action or a refusal of a Certificate of Lawfulness.

### **3 THE ROLE OF OFFICERS**

- 3.1 In advance of hearings and inquiries, the Development Management Technical Support Team directly support the Planning Inspectorate to secure a suitable venue, including a secure office for the Inspector (if requested) and/or the appellant. On the day of hearings and inquiries, the team support the Inspector to ensure hearings and inquiries are held safely in accordance with any risk assessments and registration requirements, including assisting the public to observe either in the hearing or inquiry location or via any spillover space where capacity has otherwise been exceeded.
- 3.2 Planning Officers would normally appear as witnesses at planning appeals and other proceedings on behalf of the Council. The only exception would be in those instances where officers feel professionally conflicted having regard to the standards of their profession due to the reasons for refusal on an officer recommendation overturn. In some circumstances (such as where specialist evidence is required) it may also be necessary for other professional officers (such as Environmental Health) to attend, or for the Council to appoint specialist consultants to appear and give evidence for the Council's case.
- 3.3 In giving evidence, Planning Officers will present the best possible case on behalf of the Council, while complying with the Royal Town Planning Institute ("RTPI") Code of Professional Conduct. This Code requires that Planning Officers who are members of the Institute to not make statements purporting to be their own, but which are contrary to their bona fide professional opinion.
- 3.4 Planning and Legal Officers will support Members whether involved with the presentation of the Council's case or not, including those otherwise attending or wishing to make representations at appeals, and advise them in advance on how to prepare for speaking and/or delivering evidence.

### **4 THE ROLE OF MEMBERS AS PRIVATE INDIVIDUALS AND PARISH / TOWN COUNCILLORS**

- 4.1 In situations where Members have clearly demonstrated a 'closed mind' on a planning application prior to consideration by Committee, they will not be permitted to be involved in the determination of that application or the subsequent appeal statement or process. In this case, or where a Member does not support the Council decision irrespective of the type of appeal, a Member may decide to make their submissions to an appeal which will be in either a personal capacity only or in their role as a Town / Parish Councillor.
- 4.2 It may be that on occasions electors may expect that their Ward Member(s) will attend a hearing or inquiry to further represent their interests and view. This can be

seen as part of the democratic process, and a Ward Member wishing to do so should take the opportunity of first being fully briefed by Planning Officers on all the issues the subject of the appeal.

## **5 REVIEW OF REASONS FOR REFUSAL**

- 5.1 On occasions during the course of an appeal, the Council may formally be requested by or on behalf of the appellant to reconsider its reasons for refusal. Any review shall be undertaken at the level the original decision was made and on report of the Assistant Director: Planning and Implementation only.
- 5.2 Where a Committee has not formally reconsidered its reasons for refusal, and there is insufficient time to do so, then in order to ensure the Council minimises its exposure to unreasonable behaviour cost awards against it, the Assistant Director: Planning and Implementation, in managing the appeal process, will act in consultation with the Leader of the Council, the Chairperson of the relevant Planning Committee and any Nominated Member(s).