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DEVELOPMENT MANAGEMENT - PROTOCOL FOR MEMBER INVOLVEMENT IN PRE APPLICATION AND LOCAL DEVELOPMENT PLAN (LDP) DISCUSSIONS

1. PROCEDURAL ELEMENTS FOR PRE APPLICATION DISCUSSIONS

- ~~(i) **LDP Developer forums** – The local authority apply the existing protocol and invite a developer to a forum run by the authority with invited Members, and other attendees to hear and comment on an officer’s introduction and developer’s explanation of the emerging proposal. No fee will be charged for these forums. The forum can provide a clear context for Members to listen to proposals and give views as to what issues need to be addressed in any formal submission to the LDP process. These forums will be only upon the invitation of the Council and will be solely for the purposes of progression of the LDP. Any LDP forum will be chaired by a senior officer and will be restricted to discussions of matters which will be strictly restricted to matters related to the LDP alone.~~
- (ii) Development Management forums** – Upon receipt of a formal pre-application enquiry with appropriate fee the local authority consider the proposals to be a strategic major development (see section 5). The Council request the developer to attend a forum run by the authority with Councillors, representatives of consultees and various interested parties invited to hear and comment on an officer’s introduction and developer’s explanation of the emerging proposal. External invitees will be selected by officers from the Council’s statutory planning application consultation list. The forum can provide a clear context for Members to listen to proposals and give views as to what issues need to be addressed in any formal submission. Such forums should be arranged, chaired and publicised by the local authority. Consultees including, parishes, amenity societies and public representatives may be invited to speak. The Officer explains the process, the context of the proposals and the Councillors’ roles. Officers note the issues arising and record any actions.

2. PROTOCOL FOR PRE APPLICATION DISCUSSIONS WITH COUNCILLORS

2.1 Step 1 Initiation of pre-app process –(development management only)

- 2.1.1 For Development Management Forums a prerequisite will be that a formal pre-application enquiry shall have been submitted and an appropriate fee shall have been paid to the Council before any forum is arranged.
- 2.1.2 Within five full working days of a valid Development Management enquiry the details shall be entered onto a Pre-Application Register, held by the Planning Service.

2.2 Step 2 Assessment and arrangement

~~**2.2.1 Development management:**~~

- 2.2.1 Officers will assess the pre- application proposals against the criteria for **strategically important major development as described in section 5 of this Protocol**. Should the proposals be considered to be fitting with this criteria then the case officer will approach the developer with a view to arranging a pre-application with Members. Officers shall seek/pursue two dates (**convenient to the Ward Member(s)**) with the developer at which a meeting with Councillors can be held (Development Management performance criteria require a first written response to developers to be returned no later than 21 days from the receipt of an enquiry). **Subject to these dates being convenient to the Ward Member (s),**

Councillors shall be notified via an all Member e mail at no fewer than five days before any meeting date. The Development Control Management Forum shall be set for whichever the greatest number of Councillors is available to attend the forum*.

2.2.2 LDP:—

~~2.2.2.1 At key stages of the drafting of the LDP it may be desirable for Members to engage with developers. This will be at the invitation of the Council not instigation via developer enquiry. On such a basis no fee will be payable to the Council. The LDP forum will be arranged to assist and inform the LDP process. Officers shall seek two dates with the developer at which a meeting with Councillors can be held. Councillors shall be notified via an all Member e mail at no fewer than five days before any meeting date. The LDP Forum shall be set for whichever the greatest number of Councillors is available to attend the forum*.~~

** where any dispute over the date of a meeting arises then arbitration shall be given within 48 hours by e mail agreement between the Chief Executive and Chairman of Planning and Licensing Committee*

2.3 Step 3 – At the Meeting

2.3.1 Where Members are present, the meeting will be conducted as follows:

- a) A senior officer will introduce the purpose of the meeting and advise how it will be conducted. Members will be advised as to the confidentiality status of the proposal. The meeting will be chaired by a senior officer. ~~Any LDP forum will be strictly chaired to an agenda drawn to reflect only those matters relating to the progress of the LDP.~~ If at any time the discussion departs from these considerations then the chair will have discretion to close the forum.
- b) Introductions will then be made.
- c) The potential applicant will then present their proposal (the presentation having first been viewed by a Senior Planning Officer and if necessary a legal officer, to ensure that it will not lead Members into negotiations and to check for accuracy).
- d) Members will then have the opportunity to ask questions and seek clarification, but care will need to be taken that personal views are not expressed. They may alert the developer to what they perceive as the likely view of their constituents, but this must be in the context of the LDP or alternative policy framework.
- e) The Chairman will then conclude the meeting. Members may advise Officers of any concerns they may have with the proposal and any elements which they feel would benefit from negotiation with the developer. Officers will provide professional advice and guidance as to what negotiations would be reasonable and align with the Local Development Plan or alternative policy. Negotiations will be undertaken by Officers only.
- f) A Planning Officer will record the meeting and take a note of all present, plus any issues identified. Officers will take appropriate follow up action. The note of the meeting will be placed on file at the earliest opportunity (taking account of the need for commercial confidentiality). The involvement of Members will be recorded in any subsequent committee report.

2.4 Step 4 - Pre-application Feedback

- 2.4.1 Written pre-application guidance will then be prepared by Planning Services and sent to the applicant. The pre-application guidance letter will be circulated to those Members who have attended the event or otherwise given a written indication to be advised of the outcome.

2.5 Step 5 Additional meetings on request

- 2.5.1 Further meetings with potential developers and officers may be necessary to provide further information and clarification, after the provision of pre application guidance and prior to any application ~~or final submission under the LDP.~~
- 2.5.2 These further meetings will not as a rule involve Councillors. Only at the discretion of Chief Executive or the express request by ward member/s or relevant committee chairman shall subsequent meetings be the subject of further member engagement. In such circumstances, the case officer will approach the ~~Chief Executive~~ Director for a view as to the necessity to invite members, where upon an e mail notification requesting response within 48 hours shall be circulated to Ward Member/s or relevant committee chairman to ascertain any interest in the second (etc.) meeting with the developer.
- 2.5.3 Only in these exceptional circumstances will Officers then circulate an all Member email to advise of these further meetings (Step 2 then applies for notification and response, i.e. five days' notice, minimum of two meeting dates).

3 PRE-DETERMINATION AND PRE-DISPOSITION

- 3.1 A reason given for Councillors not getting involved in schemes before a formal consideration at planning committee is the appearance of injustice, i.e. being said to have pre-determined a scheme. As long as a councillor remains clear that they have not made up their mind and that they are willing to listen to all material consideration presented to a planning Committee before voting then they cannot be said to have pre-determined the outcome. In such circumstance a Member may be said to be pre- disposed by expression of a view, but clearly will remain open to consideration of other material considerations before finally making their mind up and voting at the planning committee.
- 3.2 The following considerations also apply:
- a) Members should only attend those meetings organised in accordance with this protocol and not arrange private meetings with developers.
 - b) Members should promote community aspirations through the Sustainable Community Strategy and the Local Development Plan or alternative policy process.
 - c) Members are at the meeting to learn about an emerging proposal, to help identify issues to be dealt with by further submission and negotiation and may wish to avoid expressing any firm view on the proposal which might indicate to third parties that the Member has 'pre-determined' the application. Although the Localism Act 2011 has provided greater freedom on this, the legal position remains that if pre-determination at the planning decision stage is evident, then this could give rise to legal challenge.
 - d) Any Planning Committee Member who elects to express a firm view for or against the proposed development at this stage should be mindful that further opinions, advice and evidence may arise during ~~the LDP or~~ planning application process. So

long as Members clearly state that the opinion is subject to receipt of further evidence and advice, and that they have not closed their mind on the matter, this may then be seen as pre-disposition which is legitimate. Officers will be pleased to advise Members further on this prior to any meeting.

- e) Training will be available on request for Members who wish to attend pre application ~~and LDP~~ discussions.

4. GENERAL CONCLUSIONS

- 4.1 Pre-application discussions should always be conducted at the appropriate officer level. However, it should be made clear that the views expressed may be subject to review by officers at a more senior level or by Members at Committee. Advice should be consistent with statutory plans, government planning policy guidance and statements and any other material considerations.
- 4.2 Officers should make a detailed written note of any pre-application meetings as soon as practicable. Confirmation of the advice given should always be supplied in writing when requested by or on behalf of the applicant or when deemed appropriate by the section manager.
- 4.3 The involvement of Members should be recorded in any subsequent committee report.
- 4.4 In the case of potentially contentious meetings, two or more officers will attend.

5 STRATEGICALLY IMPORTANT MAJOR DEVELOPMENT CRITERIA

~~5.1 — Development which will automatically be deemed of strategic major interest~~

5.1.1 Residential

- Any application of 50 dwellings or more; or any outline residential development proposals whose site is 2 hectares or more
- Any residential proposal promoted as an allocated site within the LDP.

5.1.2 Affordable Housing

- Any 100% Affordable Housing proposals of six dwellings or 0.3ha or more in outline form.

5.1.3 Non-residential development

- Any non-residential development proposal, whose floor area is 1,500 square metres or more or whose site area is 2 hectares or more.
- Any non-residential proposals relating to development proposals allocated within the LDP.

5.1.4 Retail

- Any retail development 1,000 square meters or more or which of 250 square metres or more and is proposed to be beyond existing town centres as defined in the local plan or emerging LDP.

5.1.5 Mixed use development

- Any mixed use development proposals whose site area is 2 hectares or more, or is of 50 dwellings or 1,000 square metres commercial floor area or more.

5.1.6 Renewable Energy

- Wind Turbines
- Any wind energy proposals whose output capacity is 1Mw or more or which proposes three or more turbines of 30m or more.
- Solar energy
- Any Solar energy proposals whose output capacity is 1Mw or more or which proposes 4,000 or more solar panels.
- Energy from Waste
- Energy from Waste Scheme which is 1MW capacity or more.

NOTE: Development Management Enquiries - Consideration of other strategic or corporate merit:

Some applications which do not fit the thresholds or development types outlined above may demand discretion to be exercised as to their specific merits. These enquiries may have a local strategic importance or in some other way make a major contribution to the delivery of corporate objectives. In such circumstances the Chief Executive in consultation with the appropriate Ward Member(s) will determine whether it is appropriate to engage Members in the pre-application process.

Originally agreed and endorsed by the Planning and Licensing Committee – 1 August 2013