



THE NEWCASTLE CHARTER

Part 5.4C - Protocol – Planning Committee Matters and Guidance Note - Members' Discussions with Developers

Notes:-

This constitutes a local protocol breach of which will constitute a breach of paragraph 6 of the Code of Conduct for Members at Part 5.2A.

Authorisation

This amended protocol was approved by City Council on 25 May 2005. It replaces the previous protocol approved by City Council on 4 June 2003. Minor changes were made in 2008 to reflect the revised Members' Code of Conduct.

Further changes have been made in 2012 to reflect the new Members' Code of Conduct and up to date legislation, as well as to add Appendix B(II) approved by delegated decision on 26 July 2010.

CITY OF NEWCASTLE UPON TYNE

PROTOCOL- PLANNING COMMITTEE MATTERS

This Protocol sets out principles to guide members and officers in determining planning applications and making other decisions within the terms of reference of Planning Committee.

It was originally approved by Development and Regeneration Committee and Policy and Resources Committee in 1998, but has subsequently been updated.

Although it is of particular relevance to members of Planning Committee, **it applies to all members of the Council who may become involved in planning and development matters.** It will be distributed annually to all members of the Council together with co-opted members of the Historic Environment Advisory Panel.

Copies will be available for the public in the Development Management Section, the Democratic Services Division and public libraries. A copy will also be available on the Council's Internet site.

CITY OF NEWCASTLE UPON TYNE

PROTOCOL- PLANNING COMMITTEE MATTERS

CONTENTS

- A. Need to consider the protocol
- B. Other guidance
- C. Interests of the whole community
- D. Interests of members
- E. Planning considerations
- F. Officers' advice
- G. Possibility of challenge
- H. Representations on appeals
- I. Lobbying of Planning Committee members
- J. Lobbying of other members
- K. Lobbying by Planning Committee members
- L. Lobbying by other members
- M. Contact between members and officers
- N. Meetings with interested persons
- O. Ward interests
- P. Hospitality
- Q. Applications by members and officers
- R. Site visits
- S. Public meetings
- T. Ward Committee meetings
- U. Hearings
- V. Press comments
- W. Breaches
- X. Scrutiny
- Ap. A. Contact officers
- Ap. B. Guidance Note - Members' Discussions with Developers
- Ap. B(ii) Guidance Note: Pre application forum for Major Developments
- Ap. C. Means of challenge
- Ap. D. Annual Return
- Ap. E. Protocol and procedures for planning obligations

CITY OF NEWCASTLE UPON TYNE

PROTOCOL- PLANNING COMMITTEE MATTERS

A. NEED TO CONSIDER THE PROTOCOL

- A. Members of the Council should have regard to the principles contained in this Protocol when involved in planning and other development matters.**

If members are uncertain about the application of the Protocol, they should seek guidance from Officers, preferably in advance of any meeting.

Appendix A contains a list of current contact officers.

A representative of the Assistant Director Legal Services attends all meetings of Planning Committee.

The term “member” includes all co-opted members particularly those of the Historic Environment Advisory Panel.

B. OTHER GUIDANCE

- B. The provisions of this Protocol supplement but do not replace the provisions of other guidance.**

In particular, all members must ensure that they comply with the law relating to the declaration of personal and non-participatory interests in the Members Code of Conduct.

Members should have regard to the following provisions and guidance: -

- The Code of Conduct for Members (Part 5.2A of the Newcastle Charter);
- Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter);
- Guidance Note - Members' Discussions with Developers (a copy is attached at Appendix B (I) and Appendix B(II)).

Members must be mindful that if they have a “non-participatory interest” as defined in the Members' Code of Conduct, they must withdraw from the meeting and take no part in the matter.

C. INTERESTS OF THE WHOLE COMMUNITY

- C. Members of Planning Committee should determine planning matters in the interests of the whole community of the City.**

All applications should be determined on their respective planning merits.

Members of Planning Committee should not prejudge planning applications nor do anything that may reasonably be taken as giving an indication of having prejudged planning applications which are to be considered by the Committee before reading the Officers' Report and attending the meeting of the Committee and listening to the presentation and debate at the meeting.

All other members should have regard to these principles when dealing with planning matters and must avoid giving an impression that the Council may have prejudged the matter.

Planning Committee has full delegated power to determine all planning matters on behalf of the Council; however, **City Council and the Cabinet are responsible for determining the overall planning policy of the Council.** Once a planning application has been determined and the notice of decision issued, the decision cannot be overturned. Members of Planning Committee have a very responsible task for determining matters on behalf of the Council.

Members should remain present throughout the consideration of any particular application. If a member arrives after consideration of an application has started or has to leave during the consideration of it, the member should not participate in the debate on that application.

D. INTERESTS OF MEMBERS

- D. Where members have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.**

Where the interest is such that members of the public may feel that the member will not be able to approach matters with an open mind and consider the application on its planning merits, members should consider withdrawing from the Committee for that item.

These principles apply equally to members who are not members of Planning Committee. Members who have such interests should consider whether it is appropriate for them to participate in the planning process, and in any event, should declare such interest at any meeting which they may attend or in any letter which they may write.

Members should seek guidance from officers.

Members of Planning Committee and Officers who attend Planning Committee regularly should complete the Annual Return in the form set out in Appendix D.

Section 25 of the Localism Act 2011 provides that:

“A decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision because:

- a) the decision-maker had previously done anything that directly or individually indicated what view the decision maker took, or would or might take, in relation to a matter, and;
- b) the matter was relevant to the decision”.

The key point is that by the time the member considers the planning application they must have an open mind and appear to have an open mind when determining the planning application.

The Code of Conduct for Members provides guidance as to personal and non-participatory interests which may affect a member’s ability to take part in the decision-making process. However, members may have other interests which may influence their decision which will not amount to personal or non-participatory interests for the purposes of the Code. In order to maintain the integrity of the planning system, members should be careful to ensure that such interests do not unduly influence their decisions.

Examples of such interests are: -

- from ward concerns (see section O for further guidance)
- from membership of other Committees of the Council
- from membership of other public or community bodies
- from membership of voluntary associations and trusts (including where appointed by the Council)
- from a connection with a particular policy initiative of the Council.
- from membership of clubs, societies and groups
- from hobbies and other leisure interests

Such interests may mean that a Member is involved with a planning application before the matter comes before the Planning Committee. Such involvement need not on its own debar a member from participating in making the planning decision when the matter is considered by Planning Committee providing that the member has not already decided how they will vote on the matter before the Committee. Members should, however, always consider carefully whether in any particular case they could reasonably be seen to approach the planning merits of the application with an open mind. If the member considers that this is not possible, the member should withdraw from consideration of that item.

As a minimum, the integrity of the planning system requires openness on the part of members; it must operate fairly and be seen to operate fairly.

E. PLANNING CONSIDERATIONS

E. Planning decisions should be made on planning considerations and should not be based on immaterial considerations.

Members of Planning Committee should attend training sessions which may be organised from time to time. All other members are encouraged to attend.

Planning legislation, as expanded by Government Guidance and decided cases, defines which matters are material considerations for the determination of planning decisions. There is much case law on what are material planning considerations. The consideration must relate to **the use and development of land**.

Briefly, at the date of the preparation of this Protocol, material planning considerations include: -

- the Development Plan;
- Government Guidance (contained in such documents as Circulars, Planning Policy Guidance Notes, Mineral Policy Guidance Notes, National Planning Policy Framework and Ministerial announcements);
- Supplementary Planning Document;
- non-statutory planning policies adopted by the Council;
- the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas;
- the statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses;
- representations made by statutory consultees and other persons making representations in response to the publicity given to applications, to the extent that they relate to planning matters
- planning obligations (given unilaterally or by way of agreement) under section 106 of the Town and Country Planning Act 1990. The Council's protocol and procedures on planning obligations are included at Appendix E.

It should, however, be noted that the risk of costs being awarded against the Council on appeal is not itself a material planning consideration.

It is the responsibility of officers in preparing reports and recommendations to members to identify the material planning considerations and warn members about those matters which are immaterial planning decisions.

Personal considerations and subject to the paragraph below purely financial considerations are not on their own material; they can only be material in exceptional situations and only in so far as they relate to the use and development of land - such as,

the need to raise income to preserve a listed building which cannot otherwise be achieved.

In relation to financial interests section 143 of the Localism Act 2011 states that a grant of financial assistance to the Council (and a number of public bodies) is a material planning consideration so far as it is material to the planning application. Officers will be able to advise as to the materiality of any financial assistance.

The planning system does not exist to protect private interests of one person against the activities of another or the commercial interests of one business against the activities of another. The basic question is not whether owners and occupiers of neighbouring properties or trade competitors would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated.

It will be inevitable that all the considerations will not point either to grant or refusal. Having identified all the material planning considerations and put to one side all the immaterial considerations, members must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

The Council is also subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the planning function except when such matters are clearly immaterial because they are not capable of relating to the use and development of land. Examples of these duties include:

EQUALITY ACT 2010 – section 149 provides that:

A council must, in the exercise of its functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (3) foster good relations between persons who share a protected characteristic and persons who do not share it.

The above powers relate to the following protected characteristics:

- (a) age
- (b) disability
- (c) gender reassignment
- (d) marriage and civil partnership
- (e) pregnancy and maternity
- (f) race (including colour, nationality and ethnic or national origins)
- (g) religion or belief
- (h) sex
- (i) sexual orientation

HUMAN RIGHTS – section 6(1) of the Human Rights Act 1998 provides that:

“It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

BEST VALUE – section 3(1) of the Local Government Act 1999 provides that:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”

CRIME AND DISORDER – section 17(1) of the Crime and Disorder Act 1998 provides that:

“Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

HEALTH AND SOCIAL CARE – section 116B(1) of the National Health Service Act 2006 provides that:-

“[The Council] and each of its clinical commissioning groups must, in exercising any functions, have regard to –

- (a) any assessment of relevant needs prepared by [the Council] and each of its clinical commissioning groups under section 116 [of the National Health Service Act 2006] which is relevant to the exercise of the functions; and
- (b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant.”

F. OFFICERS’ ADVICE

F. All members should pay particular attention to the professional advice and recommendations from officers.

They should only resist such advice, if they have good reasons, based on land use planning grounds.

Although appellants often make an issue on appeal about the fact that members have not followed officer’s advice, it has never been the case that members must follow advice. As a sole ground of appeal, it is a weak position.

Planning decisions are a matter of balancing material considerations in the public interest. As such, members represent an important local democratic influence in the planning system. Difficulties arise only if members do not follow officers’ advice in the absence of good reasons, based on land use planning grounds, and which can be substantiated with evidence.

The careful formulation of reasons for refusal is crucial to the chances of success on appeal. It should not be treated lightly.

The reasons must be: -

- clear;
- concise;
- based on material planning considerations; and
- able to be substantiated by evidence.

Such an approach may not secure success on appeal but will certainly reduce the risk of costs being awarded against the Council. Section G of this Protocol provides further guidance as to the circumstances in which costs may be awarded against the Council in a planning appeal.

Officers will attempt to assist members in such circumstances.

Members should also be aware that, in exceptional circumstances, the possibility of an officer giving strong evidence on an appeal in these circumstances may be so seriously prejudiced by a decision not to follow his advice that there will be no alternative but to call members to give evidence and/or to employ external planning consultants.

In particular, where Members wish to propose a resolution which is contrary to that contained in an officer's report, they must give very careful consideration as to whether their reasons for doing so are based upon proper planning grounds.

The officer's report will have been drawn up prior to the committee meeting and this should have allowed the officer an opportunity to consider carefully all the relevant issues before reaching a conclusion based upon his or her professional judgement. Consequently, before voting on any proposed resolution which is contrary to that recommended by officers, Members must consider carefully:

- (i) whether the proposed contrary resolution is based upon reasons which are capable of constituting proper planning considerations; and
- (ii) even if such reasons are capable of being proper planning considerations, whether there is sufficient evidence to substantiate such reasons in the present case.

It is imperative that Members allow officers to comment on both of these aspects of a proposed contrary resolution before any vote is taken.

G. POSSIBILITY OF CHALLENGE

G. All members should be aware of the possibility that decisions on planning matters can be challenged through various processes.

All decisions made by members can be challenged. Details are contained in Appendix C.

There is no need to fear a challenge so long as the proper procedure has been followed, regard has been had to all material considerations, immaterial considerations have been ignored and a careful balancing exercise has been carried out.

In such circumstances, a decision may still be overturned by the Inspector or the Secretary of State on appeal; but, it will be because a different view has been reached as to the outcome of the balancing exercise.

The risk is where the application has not been determined properly. There is a cost risk to the Council. Costs are not awarded just because the Council has lost an appeal. Costs are only awarded where the Inspector or the Secretary of State considers that the Council has acted unreasonably. Examples include:-

- no good planning reasons for making the decision;
- procedural unfairness;
- no good planning reasons for resisting advice;
- no evidence to substantiate reasons;
- failure to substantiate all the reasons.

H. REPRESENTATIONS ON APPEALS

- H. Particularly where a public inquiry is to be held to consider an appeal, all members should contact the relevant planning officer and the solicitor who are dealing with the appeal before making representations and certainly before attending the inquiry.**

Appeals can be dealt with in writing, by informal hearing or by public inquiry.

The costs risk at a public inquiry can be particularly high because it will involve legal representation by solicitors and/or barristers - often Queen's Counsel. If an appellant insists on a public inquiry, it shows that the matter is of great significance to him/her and so s/he is likely to employ professionals.

The costs to an appellant of a short inquiry can be very substantial. Additionally, the Council will incur in-house costs.

The Council will present only proper planning evidence. If a member attends an inquiry and presents evidence based on immaterial considerations, there is a risk that the Council's case will be undermined and an appearance created that the Council has acted unreasonably. The risk is particularly strong if the member participated in the decision. Members are requested to seek guidance from officers.

I. LOBBYING OF PLANNING COMMITTEE MEMBERS

- I. While recognising that lobbying of members has an important role in the local democratic process, members of Planning Committee should ensure that their response is not such as to give reasonable grounds for their impartiality to be questioned or to indicate that the decision has already been made.**

This principle is of particular importance for members of Planning Committee. A Member of Planning Committee who is lobbied before the meeting:-

- May listen to what is being said
- May give procedural advice (e.g. the right to request a hearing, the deadline for written representations)
- May refer the lobbyist to a colleague who does not sit on the Committee
- Should refer the lobbyist to the relevant Planning Officer so that their views can be recorded and included in the report to the meeting
- Should not give details of voting intentions or otherwise enter into a commitment to oppose or support the application

- Should report all instances of significant, substantial or persistent lobbying to the Head of Development Management.

There is no problem about listening to a point of view. If members of Planning Committee express an opinion, without hearing the alternative view, it may create the impression that members have pre-judged the matter and will not approach the matter with an open mind on its merits at the Committee.

Members of Planning Committee who feel that they are unable to follow these guidelines and who prefer to publicly support or oppose an application or to involve themselves in the organisation of a particular pressure group or support the position of a developer should discuss the matter with the Assistant Director Legal Services. If the situation remains unchanged, they will probably have to declare an interest at the meeting and not participate in the meeting. However, the member may stay for a hearing to make representations and answer questions on those representations provided that (a) the member has requested in advance under Section U of the Protocol the right to be heard and that request has been granted and (b) the member leaves immediately after making such representations and answering questions.

See section O for additional guidance in respect of Ward Interests.

J. LOBBYING OF OTHER MEMBERS

- J. While recognising that lobbying of members has an important role in the local democratic process, all other members should ensure that their response is not such as to give reasonable grounds for suggesting that the decision has already been made by the Council.**

All other members should ensure that the integrity of the planning process is protected and should not create an impression that a decision has already been made or that a particular outcome is assured. All members should be careful against giving unconditional support or opposition before considering all points of view and the planning policy context.

K. LOBBYING BY PLANNING COMMITTEE MEMBERS

- K. Members of Planning Committee should not directly or indirectly organise support or opposition, lobby other members, act as an advocate, or put pressure on officers for a particular recommendation.**

If members of Planning Committee engage in such conduct, it will be apparent that they have prejudged the application and are incapable of dealing with the matter with an open mind. If members find themselves in such a situation, they should withdraw from the Committee for that item.

See section O for additional guidance in respect of Ward Interests.

L. LOBBYING BY OTHER MEMBERS

- L. All other members should generally follow the principle set out in section K and do nothing to affect the integrity of the planning**

system; in particular, they should not put pressure on officers for a particular recommendation.

Members who are not responsible for determining planning applications should ensure that activities in the nature of lobbying are not such as to create an impression that the planning process has been prejudiced.

- Members should consider carefully what effect on the integrity of the planning process any action they take may have (such as the circulation of correspondence to members). If members receive correspondence about an application, they should copy it to the Head of Development Management rather than directly to members of Planning Committee. This ensures that the information appears on the public planning file.
- The Ombudsman has previously taken the view that the use of political “whips” at group meetings prior to a meeting to decide how members should vote can amount to maladministration
- Generally, members should avoid organising support for or opposition to a planning application, and avoid lobbying other councillors. Such actions can easily be misunderstood by parties to the application and by the general public.

Members are reminded that whilst under the Council's Standing Orders they have a right to attend meetings of Planning Committee, they can only speak with the previous approval of the Chair. It is the Committee's practice that the approval should be sought before the meeting.

M. CONTACT BETWEEN MEMBERS AND OFFICERS

- M. All members and officers must ensure that contact between them in connection with planning matters accord with the established convention of mutual respect and should not undermine the good working relationships which are critical to the success of the Council and good local government.**

Members should never put pressure on officers in respect of a planning matter, such as to make a particular recommendation.

Officers should be available to discuss the issues relating to planning applications with members to better inform them of all the facts and circumstances relating to the matter.

Members and officers should conduct themselves in accordance with the Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter).

Officers should also conduct themselves in accordance with the Code of Conduct for Employees (Part 5.2C of the Newcastle Charter)

N. MEETINGS WITH INTERESTED PERSONS

- N. Members of Planning Committee are able to take part in pre-application discussions with developers or have other meetings with persons interested in a current or potential planning application and**

prior to attending such a meeting the member must inform the Head of Development Management of the proposed meeting.

Where other members are approached to participate in such discussions, they should follow the principles of the existing *Guidance Note - Members' Discussions With Developers (Appendix B (I))*. Where such a meeting relates to the pre-application forum for major developments the member shall follow the protocol in *Appendix B (II) entitled Guidance Note: Pre-Application forum for Major Developments*.

The expressions "developers" or "persons interested" should be interpreted widely and include applicants, land owners, objectors, persons affected, potential competitors and rivals, and persons acting on behalf of such persons.

Such meetings may make it difficult to maintain impartiality and the appearance of impartiality. The guidance note sets out the procedure to be followed.

O. WARD INTERESTS

O. The principles of this Code apply equally to members who are acting in respect of matters arising in their ward. Ward Members must ensure that the integrity of the planning process is not affected by such interests.

Lobbying is a normal and perfectly proper part of the political process and persons who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of Planning Committee. The views of neighbours and residents have an important role in determining planning applications, but only in so far as they relate to planning considerations.

Members of Planning Committee who represent a ward affected by an application are in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support or opposition, it will be difficult for the member to argue that s/he has approached the actual decision with an open mind and s/he will probably have to withdraw from the meeting. It has been recognised that this can be a severe restriction on a member's wish or duty, even, to represent the views of the electorate, and in most cases short of such high profile, active lobbying for a particular outcome, it should be possible for a member to give support to a particular body of opinion whilst waiting until the Committee meeting and hearing all the evidence presented before making a final decision.

By following the principles of this code, ward members should be able to protect the integrity of the planning system while carrying out their role as ward representatives. In particular to the guidance contained in section I, J, K and L, ward members who find themselves in such a situation: -

- May refer the matter to another member who is not a member of Planning Committee
- May bring the concerns which have been expressed to them to Officers so that they can be fully investigated as part of the consideration of the application. In most cases that can be achieved without the member actually objecting or supporting an application and is a legitimate role for members.

See Section T for guidance on the role of Ward Committee meetings.

Members of Planning Committee may properly assist their constituents in putting forward complaints under the Corporate Complaints Procedure in relation to planning matters. There will be no concerns once an application has been determined. Even where an application has not been determined, there should be no concerns so long as care is taken to avoid giving an impression that the member has predetermined the application.

P. HOSPITALITY

- P. Members of the Council, wherever possible, should avoid knowingly accepting gifts or hospitality from persons who are currently or likely to be promoting or opposing planning applications or from others connected with such persons.**

Members must comply with paragraph 3 of Annex 3 of the Code of Conduct for Members.

If you have received within the previous 3 years the offer of a gift or hospitality with an estimated value of more than £50 (whether or not you accept the offer) from any person, which attributable to your position as an elected or co-opted member of the Council this will be a registerable personal interest.

All receipts or offers of gifts or hospitality of at least £50 in value must be disclosed to the Service Manager Democratic Services on behalf of the Monitoring Officer.

Members should carefully consider whether the nature of the gift or hospitality is such that they ought properly to withdraw from the Committee for that item.

Members should seek guidance from officers.

The receipt of gifts and hospitality can easily cause damage to public confidence in local government and affect the perceived integrity of the planning system. Any offer of a gift, favour or hospitality should be treated with extreme caution, especially where it is from an applicant/objector to a planning application.

Members should also bear in mind the guidance in Section D above.

Q. APPLICATIONS BY MEMBERS AND OFFICERS

- Q. Members and officers should never knowingly take part in the processing of planning applications submitted on their own behalf or on behalf of their relatives, friends or neighbours.**

Nor should members and officers, who deal with planning applications, act as professional agents for persons pursuing or objecting to a planning application.

It is inevitable that, from time to time, members and officers will need to make a planning application. It is imperative that they take no part in processing the application. In such a situation, members and officers should separately notify the Head of Development Management and the Assistant Director Legal Services of their involvement. The planning file will be marked accordingly to identify their interest.

They should similarly notify the Head of Development Management and the Assistant Director Legal Services of applications involving their relatives, friends or neighbours, of which they are aware.

In such circumstances, members and officers should not otherwise attempt to use their position to influence the processing of their application.

Members and officers who deal with planning applications should never act as professional agent on behalf of applicants or objectors within Newcastle City Council's administrative area. The impression must never be created that the possibility of obtaining planning permission can be increased by employing members and officers as agents. Officers are also subject to the provisions of the Code of Conduct for Employees.

R. SITE VISITS

R. Site visits should only take place where strictly necessary to assist in the determination of planning applications. The site visit should be conducted so as not to favour either applicant or objector.

Except in exceptional circumstances, site visits should only be arranged with the prior agreement of the Committee and where the Committee is advised that it will assist in determining the planning application.

Site visits are only likely to be necessary in the following cases: -

- where the impact of the proposed development is difficult to visualise from plans and supporting material; or
- where there is a good reason why the comments of the applicant or objector cannot be expressed adequately in writing.

Site visits should be unaccompanied by either the applicant or the objector. No discussion about the application should take place with the applicant or objector on site visits.

Decisions are not made on site visits but are made at the following meeting of the Committee. Whilst it is inevitable that members and officers will discuss the details of the application at a site visit to some extent so that members fully understand the nature of the proposed development and its possible effects, it is imperative that members ensure that they do not give grounds for any suggestion that they have already reached a conclusion on the merits of the application prior to the subsequent Committee meeting. Furthermore, where ward members who are not members of Planning Committee attend a site visit, they must also take great care to abide by this principle and their attention is drawn to the guidance in sections K to I of this Protocol.

Where a site visit is arranged, all members should make an attempt to attend the visit. If all members are not able to attend, those attending should report to the Committee the outcome of the visit to assist those who were not able to attend. Members who were not able to attend should consider whether in the circumstances they are able to give proper consideration to the application.

S. PUBLIC MEETINGS

S. Public meetings to discuss planning applications should only be arranged where strictly necessary to assist in the determination of planning applications.

Publicity for planning applications is an important part of the process of determining planning applications. Public meetings can be a useful part of the publicity exercise.

The purpose of public meetings as part of the publicity exercise is to provide an opportunity for the public to make their views known to the Council so that they can be taken into account, so far as they are material, and to provide information about the planning process. Such meetings should only be arranged after consultation with the Head of Development Management.

The role of members at such meetings is to listen to views and not to promote or oppose an application. This is most important in the case of members of Planning Committee.

Similarly, the role of officers is to listen and explain the planning process and not to promote or oppose an application.

The meeting must be conducted to ensure that all persons attending feel that they are being treated fairly and equally. The impression must not be created that the Council has already decided how the application will be determined. While developers and objectors should usually be invited to the meeting, the impression must not be created that they are running the meeting.

This guidance applies to meetings being organised by the Council.

It is possible that public meetings may also be arranged by others (such as applicants or objectors) and the organisers may invite members and officers to attend.

Guidance should be sought from the Head of Development Management on whether it is appropriate to attend in these circumstances. The important principle is to ensure that the integrity of the planning process is not affected. The request should be considered as a form of lobbying and should be dealt with in the light of the guidance contained in particular in sections I, J, N and O.

T. WARD COMMITTEE MEETINGS

T. Meetings of Ward Committees may be arranged by the Council, in exceptional cases, as part of the formal publicity arrangements in connection with a planning application. The meeting should be conducted in accordance with the guidance contained in section S.

In other cases, planning issues may arise at Ward Committee meetings as part of the usual business. It should be dealt with in the light of the guidance contained in sections I, J, N and O.

The Ward Committees should not resolve to recommend to the Council that an application should be granted or refused.

A Ward Committee meeting will not have before it all the relevant information relating to a planning application. Especially, in the case of matters raised informally by residents, the Committee is likely to hear only one side of the issue. It will not therefore be in a position of being able to reach a balanced recommendation and it should therefore avoid making a recommendation. Any recommendation, in these circumstances, is likely to aggrieve the other party who has not had the opportunity of making representations.

The proper approach in these circumstances is for the Committee to arrange for the views put forward to be passed to the Head of Development Management so that he can investigate the concerns in more detail as part of his analysis of the application and refer to the matters in his report to Planning Committee.

Ward Committees should not resolve to send a remit to Planning Committee recommending that a planning application should be granted or refused. They may send a remit drawing to the attention of Planning Committee issues that have been raised.

U. HEARINGS

U. Hearings should only take place where strictly necessary to assist in the determination of planning applications. Hearings should be conducted to ensure fairness between the applicant and objector.

Requests for hearings should be made to the Strategic Housing, Planning and Transportation Division at least four working days before the meeting of the Committee at which the matter will be determined. The Head of Development Management will consult with the Chair or Vice Chair and will come to a view as to whether a hearing is likely to assist the Committee in determining the application.

Hearings should only take place where it is considered necessary to assist the determination of the planning application. This is only likely to be necessary where an applicant or an objector can show that

- the impact of the proposed development is difficult to visualise from plans and supporting material; or
- there is a good reason why the comments of the applicant or objector cannot be expressed adequately in writing, or can only be readily understood via the hearing procedure.

In cases where an application is deferred following a presentation to Planning Committee, supporters/objectors who have had an opportunity of a hearing will not normally be provided with a further opportunity for a hearing when the application is before Committee on a subsequent occasion unless new significant issues are raised.

Except in exceptional circumstances, the procedure at the hearing should be as follows:-

- Both the applicant and the objector will be invited to attend a hearing;
- Representations may be made personally or through a representative;
- No more than one person will be heard on behalf of the applicant or objector;
- Where there are more than one applicant or objector, they should determine among themselves who will represent them;
- The applicant and the objector will each be allowed up to 5 minutes to address the Committee and if there is more than one person they will need to decide how to allot their 5 minutes. If a ward councillor speaks on behalf of their ward they will have 5 minutes to address the Committee whether to support or object to the application;
- Members will be allowed to ask questions of either side and should not start the debate on the application until after both parties have been heard and questions asked;
- The parties shall not be allowed to cross-examine each other;
- The party who is making the application in question will usually be heard last.

Members should remain present throughout the hearing. If a member arrives after a hearing starts or has to leave during a hearing, the member should not participate in the determination of the application. On the same basis, members should be present throughout the consideration of any application. [See section C].

Any material to be distributed at the meeting by the applicant objector will need to be sent to the Head of Development Management at least 2 days prior to the meeting. If this is not complied with the material will not be allowed to be distributed on the day of the meeting unless there are exceptional circumstances. Material received after the agenda is published will be referred to verbally in the planning officers presentation to Committee but it will only be distributed to all members with the agreement of the Chair of Committee.

V. PRESS COMMENTS

- V. All members should ensure that any contact which they may have with the press should accord with the principles of this Code and should not affect the integrity of the planning system.**

Members should also comply with paragraph 20 in the Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter) which is set out below.

The principles of the code apply to press contact; in particular: -

- Members of Planning Committee should ensure that they do not create the impression that they have prejudged the planning application
- All other members should ensure that they do not create the impression that the Council has already pre-judged the planning application.

Paragraph 20 of the Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter) says:

"20. PR Issues

20.1 The guiding principles about the publication of publicity material and the issuing of press releases by Officers are found in the Local Government Act 1986 and the revised Code of Recommended Practice on Local Authority Publicity. This prohibits Councils from publishing any material which seems designed to affect public support for a political party.

20.2 Publicity should not be party political.

20.3 Official news releases and official press statements should only be sent out through the Press Office in the Communications and Marketing Unit.

20.4 Any interviews to be given by a Member (where he or she is to appear as a Council spokesperson) should be managed by the Press Office in the Communications and Marketing Unit."

W. BREACHES

W. A breach of this Protocol will constitute a breach of paragraph 6 of the Code of Conduct for Members. Complaints about any breach of this Protocol by a Member may be referred to the Monitoring Officer in accordance with the Protocol – Arrangements for dealing with complaints (Part 5.4G of the Newcastle Charter).

X. SCRUTINY

X. Scrutiny committees may not "call-in" decisions made by Planning Committee. While they may review and scrutinise the work of Planning Committee, as part of their agreed work programme, they should not review and scrutinise individual decisions.

The role of scrutiny committees is explained in the Scrutiny Committee Procedure Rules (Part 4E of *The Newcastle Charter*).

The "call-in" procedure allows overview and scrutiny committees to ask executive decision-makers to reconsider decisions before they are implemented. Under the Local Government Act 2000, this does not apply to non-executive decisions such as those made by Planning Committee

Scrutiny committees may review and scrutinise the overall work of Planning Committee, if it forms part of their agreed work programme. However, statutory guidance from the Secretary of State provides that overview and scrutiny committees should not normally scrutinise individual decisions made by Planning Committee. In particular, scrutiny committees should not become an alternative to normal appeals procedures. The power to review and scrutinise should normally be used as part of wider policy reviews.

APPENDIX A - CONTACT OFFICERS

Division	Officer	Direct Telephone Numbers [switchboard (0191) 278 7878]
Development Management	Kath Lawless – Head of Development Management	211 5629
Legal Services	John Softly – Assistant Director Legal Services	277 7047
	Tom Sunter – Senior Solicitor	277 7123
	Frances Glassford – Solicitor	277 7124
	Zoe Franks – Solicitor	211 5131
	Rachel Dixon – Solicitor	211 5117
Democratic Services	Linda Scott – Service Manager Democratic Services	211 5159

APPENDIX B(I)

GUIDANCE NOTE - MEMBERS' DISCUSSIONS WITH DEVELOPERS

INTRODUCTION

1. It is quite common for members to be approached individually by developers prior to formal consideration of their proposals by the Council.

Members have asked for guidance on their role when such requests are made.

The term developer includes persons wishing to develop land, persons who have an interest in land which may be the subject of development and persons acting on behalf of such persons.

This frequently occurs where the members concerned sit on a decision making body. Members are also often approached in respect of particular developments in their wards. The aim is quite clearly to influence members in considering their proposals.

Those approaches may occur at various stages: sometimes before the Council is officially involved; on other occasions, not until an application has been made. Care must be taken at all times and the principles set out in this note apply to discussions at all stages but special attention to this guidance note is necessary once some formal procedure has been initiated in which the Council is officially involved (e.g. when tenders are being sought or a planning application has been made).

2. The purpose of this guidance note is to ensure that the Council, its members and officers cannot be prejudiced by any discussions; to ensure that all parties are treated equally; to ensure that the Council's procedures are fair and not open to criticism and to ensure that decisions are made on the basis of proper information and full advice. Similar principles apply where the meeting has been authorised by a Committee but the guidance note is directed in particular to the situation where members are acting in an individual capacity.
3. It is important to consider the guidance because there is always the danger that members meeting in inappropriate circumstances may impinge on discussions and negotiations which are already taken place and the opportunity may be used by the developers to undermine those negotiations. It is also important to consider what impression others may be given, e.g. objectors to a planning application, or an unsuccessful tenderer, if they became aware of such meetings which could result in allegations of unfairness bias or improper conduct, even if Members had attended for the best of reasons and were quite clear themselves that their decision had not been influenced.
4. It is also important to consider the impression which may be given to the developer itself so as not to prejudice the position of the Council by indicating that members in these circumstances are attending on behalf of the Council rather than in a personal capacity.

GUIDANCE

A. Members are not obliged to enter into discussions with developers if contacted by them. They may refer the request to the Head of Development Management concerned.

Officers will write to developers requesting them to desist from contacting members, if they wish.

B. The relevant Cabinet Member and Head of Development Management should always be informed of the approach because they may feel it advisable to speak to the developer if they consider the approach to be improper in all the circumstances.

C. Before agreeing to meet developers, members should consider whether it may affect their ability to subsequently consider the matter when it formally comes before the decision-making body and should consult and be advised by the Head of Development Management. Members should consider any advice given to them about whether it is appropriate to meet the developer and should not disregard it without good reason.

D. Members should not seek personal invitations from developers to discussions or invite developers to discussions without first consulting and being advised by the Head of Development Management. Members should consider any advice given to them about whether it is appropriate to meet the developer and should not disregard it without good reason.

E. Generally members should not meet with developers unless the arrangements for the meeting have been made by the Head of Development Management or authorised by a decision-making body or Cabinet Member. The Head of Development Management or their representative should attend unless they consider it to be unnecessary. Full notes of the discussions should be prepared by an officer or (if an officer is not present) by the member and copies placed on the appropriate directorate files.

F. In general members should be aware that, except where expressly authorised, they have no authority to speak on behalf of the Council and no impression to the contrary should be given to the developer.

G. Members should ensure that competing developers are treated equally and offered the same facilities.

H. Members must comply with the provisions of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter) in their dealings with developers. In particular, the provisions regarding gifts and hospitality (which are set out in section P of this Protocol) must not be ignored.

I. Where discussions have taken place in accordance with this Code, members ought to declare the position at any meetings at which the matter

is discussed even though the matter may not amount to a personal or non-participatory interest as such.

Appendix B (II)

Guidance note: Pre application forum for Major developments

The Council is committed to providing an efficient, effective and customer focused planning service that helps guide developers through the planning process. To ensure that high quality developments can be delivered developers are encouraged to enter into pre application discussions at an early stage to allow issues to be identified and resolved prior to the submission of a formal planning application. Member engagement at this stage can add real value to the process. From a developers point of view it can provide useful feedback on key issues of concern to local politicians and local communities. It can therefore help to reduce uncertainty on the acceptability of a proposal and potentially avoid abortive costs. From a Members point of view it can provide an opportunity to understand a developer's proposal, provide strategic and community leadership and raise any issues likely to be of concern at an early stage.

This protocol applies to larger commercial developments only.

Probity

Central Government advice is that it is appropriate for Members to be involved at the pre application stage provided that the parameters are clearly defined. This protocol therefore sets out the guidance for members, officers and developers on how the system will be operated at Newcastle. The note should be read alongside the relevant sections of the Charter that provide detailed advice for Members on probity and planning within the Code of Conduct and the Protocol on Planning Committee matters. It is essential that the process is open, fair and transparent and accords with national and local advice on Member's Code of Conduct and predetermination. Members are referred to paragraph D of the Protocol on Planning Committee matters which states that all members of the Council must avoid giving the impression that the Council has prejudged a particular development proposal.

The pre application forum

For large scale schemes with potential city wide impact, developers will be given the opportunity to present their proposal to a Pre Application Forum.

Type of developments: The forum will be available to the following types of development:

- Residential schemes over 100 houses or over 2ha in size
- Commercial developments over 2000sqm in floorspace
- Mixed use developments on sites over 2ha
- Other schemes of City wide interest

Timing: The meeting will take place as and when necessary. It will be for a developer to request use of the service and a meeting will be arranged as soon as possible following this request.

Attendance:

The following Members/ officers will be invited to the meeting:

- Leader
- Deputy Leader

- Cabinet Member for Quality of Life
- Other Cabinet Members as appropriate
- Chair Planning committee
- Vice Chair Planning committee
- Chief Executive
- Director of Investment and Development
- Assistant Director of Development
- Assistant Director of Capital Investment
- Head of Development Management
- Relevant officers from Development Management, transport etc
- Legal officer

Meeting procedure

The meeting will be a private one and will be chaired by the Leader of the Council. A note will be taken of the meeting which will subsequently be held on the planning file (subject to any relevant exceptions under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004). The Chair will introduce the panel and explain the purpose of the meeting and procedures to be followed. The Chair will make it clear that the discussions will not bind the Council to making a particular decision and that any views expressed are provisional. The Chair will make it clear that once a planning application is submitted it will be determined by Planning Committee. The applicant will be invited to present their scheme for no more than 30 minutes. Members will be invited to ask questions of both the applicant and officers. It is important that Members do not indicate what their final view of the scheme will be but they can usefully indicate issues of concern where further information may be required. The applicant will be thanked and asked to leave the meeting

APPENDIX C - MEANS OF CHALLENGE

Failure to determine

1. **Appeal to the Secretary of State.** The Inspector or the Secretary of State may reach their own decision and there is a costs risk for unreasonable conduct.
2. **Judicial review.** The Council may be directed to determine the application and will have the risk of costs.
3. **Corporate Complaints.** A complaint may be made under the Corporate Complaints procedure.

To refuse

1. **Appeal to the Secretary of State.** The Inspector or the Secretary of State may reach their own decision and there is a costs risk for unreasonable conduct.
2. **Judicial review.** The Council will have to re-determine and will have the risk of costs.
3. **Ombudsman.** If there has been maladministration and injustice has been suffered, there is a possibility of compensation being recommended.
4. **District Auditor.** Developers have been known to threaten local planning authorities with a complaint to the District Auditor about costs incurred in defending an unjustified appeal.
4. **Corporate Complaints.** A complaint may be made under the Corporate Complaints procedure.

To grant

1. **Complaint to the Secretary of State.** The Secretary of State has power to revoke planning permissions. The applicant has a right to compensation for loss arising from the revocation. The local planning authority is responsible for paying the compensation even though the Secretary of State was responsible for the revocation.
2. **Judicial review.** This is the most likely remedy for an aggrieved objector or rival developer. The Council will have to re-determine and will have the risk of costs. There is a possibility that the aggrieved applicant may have a right to compensation. The law in this area is developing.
3. **Ombudsman.** If there has been maladministration and injustice has been suffered, there is a possibility of compensation being recommended. The Ombudsman may also recommend revocation with the compensation consequences identified above.
4. **District Auditor.** Unlikely, unless compensation costs are incurred.
5. **Corporate Complaints.** A complaint may be made under the Corporate Complaints procedure.

APPENDIX D
ANNUAL RETURN

I confirm that I have made all appropriate declarations of interest over the municipal year [] to []

OR

I have not had to make any declarations of interest over the municipal year [] to []

..... (signature)

..... (date)

This form is to be returned to the Service Manager Democratic Services before the end of each municipal year. The forms will be held in the Service Manager Democratic Services' office and open to public inspection

APPENDIX E

PROTOCOL FOR PLANNING OBLIGATIONS

1. Planning obligations enable the City Council to enter into an agreement, with those with an interest in land, which regulates development or binds the use of land. The outcome is typically infrastructure improvements, public open space or other facilities, either provided directly by the developer or indirectly by a developer contribution. Planning obligations have a range of other uses, for example to control the use of a development or to restrict the goods that can be sold from a site.
2. The City Council, in dealing with planning obligations, will abide by the fundamental principle that planning permission may not be bought or sold. The City Council will only seek a planning obligation if it would be wrong on land use planning grounds to grant planning permission without it.
3. In accordance with regulation 122(2) of the Community Infrastructure Regulations 2010 planning obligations are required to be:
 - necessary to make the development acceptable in planning terms
 - directly related to the development
 - fairly and reasonably related in scale and kind to the development

If a planning obligation does not meet all these tests it cannot in law be taken into account when granting planning permission.

4. In considering the need for planning obligations, the City Council will be in accordance with the statutory development plan policy. To the extent that they are material planning considerations, the Council's corporate priorities will also be taken into account.
5. Any report (committee or delegated) which recommends the granting of planning permission subject to planning obligations will contain reasoned justification for the obligations set out in paragraph 3 above.
6. The administration, management and monitoring of planning obligations will be in accordance with the approved Procedures for Planning Obligations.

PROCEDURES FOR PLANNING OBLIGATIONS

INTRODUCTION

1. The purpose of these procedures is to ensure that Planning obligations under S106 of the Town and Country Planning Act 1990 are administered efficiently and monitored effectively.
2. Planning obligations are determined within the planning process. The Development Management Service holds the key role in the process and the Planning Control Section will take the lead in the management of all planning obligations. Others, who may play an integral role, are:-
 - Legal Services
 - Planning Obligations Monitoring Officer, Development Management
 - Service Directorates/Divisions, where appropriate.

PRE-DECISION

3. Development Management shall be responsible for negotiating with applicants/agents on the potential for planning obligation and the 'Heads of Terms' of the S106 agreement. Legal Services shall be involved where the terms are likely to be complex.
4. Development Management shall ensure that the applicant/agent has confirmed in writing a willingness to enter into an agreement and to the Heads of Terms.
5. Where the agreement involves the implementation of works by another Council service provider, written confirmation to this and the Heads of Terms and the nominated service officer shall be obtained.

DECISION

6. The Planning case officers report shall contain justification of the need for an agreement by reference to the Community Infrastructure Regulations 2010 (reg 122(2) tests, any relevant development plan or other policies, and shall describe the Heads of Terms.

INSTRUCTION

7. Following or before the 'Minded to Grant' decision, Development Management shall:
 - write to instruct Legal Services on the preparation of the agreement and enclose the Heads of Terms and all relevant supporting information, including the nominated service officer;
 - write to the applicant/agent to advise of the decision and to ask for their legal representative to be instructed.

DRAFTING AND NEGOTIATIONS

8. Legal Services shall prepare a draft agreement and send this to Development Management. The agreement shall include, as appropriate:-
 - trigger date(s) for action/contribution
 - method of contribution
 - any dates for discharge of the agreement
9. Development Management shall vet the draft agreement, in liaison with any relevant service provider, and co-ordinate a reply to Legal Services.
10. Legal Services shall make any necessary amendments to the agreement and send the agreed draft to the applicant/agent.
11. Legal Services shall undertake and conclude contract negotiations with the applicant/agent. Any significant changes will be agreed with Development Management.

MONITORING OF DRAFT AGREEMENTS

12. Development Management and Legal Services will proactively monitor progress on draft agreements and negotiations by means of joint monthly meetings over schedules of outstanding draft agreements.
13. The City Council will aim to complete agreements within timescales set for determination of the 'Minded to Grant' decision. Non completion will cause Development Management to review the decision and planning permission may be refused.

COMPLETION OF AGREEMENT

14. Following conclusion of contract negotiations, Legal Services shall execute the agreement.

POST COMPLETION

15. Legal Services shall
 - send a copy of the agreement to Development Management and Land Charges;
 - write to the Planning Obligations Monitoring Officer, Development Management (copy to Development Management and any nominated service officer) advising that a unique cost code is required, with details of the narrative, the expected date of receipt of any contribution and, where applicable the nominated service officer responsible for the scheme/budget. Any contribution made on the signing of the agreement will be forwarded to Planning Obligations Monitoring Officer, Development Management at this point.
16. Development Management will place a copy of the agreement on the application file and expedite the issue of the decision notice.

17. Legal Services will forward any contribution made subsequent to the agreement to Planning Obligations Monitoring Officer and send a copy of the memo to Development Management and any nominated service officer.
18. The nominated service officer will inform Planning Obligations Monitoring Officer, Development Management when the works have been completed and issue a statement detailing expenditure in relation to the contribution.
19. Development Management will establish any remaining balance and prepare and issue a closing statement for the applicant/agent.
20. Development Management will authorise the payment of any remaining balance which Resources will process and issue.

MONITORING OF AGREEMENTS

21. The Planning Obligations Monitoring Officer, Development Management will enter agreements to a database monitor.
22. The Planning Obligations Monitoring Officer, Development Management will monitor agreements quarterly, including income and expenditure for each obligation cost code.
23. Where a development has commenced or a trigger point is reached without any due contribution having been made, Development Management will pursue the matter with the applicant/agent.
24. If a due contribution is not forthcoming, Legal Services will be instructed to remedy the non compliance.
25. The unexpended balance of any contribution will be returned to the developer in accordance with the terms of the agreement.
26. A report every 6 months on planning agreements will be submitted to Planning Committee.