

STANDARDS COMMITTEE

Date of Meeting	Monday, 11 April 2016
Report Subject	Draft National Planning Committee Protocol
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

A recent study by the RTPI into the operation of planning committees in Wales concluded that there was much variety of practice across Wales and recommended a National Protocol be prepared.

WG established a drafting group who have prepared a Draft Planning Protocol (see Appendix 1). The main aim of the Protocol is to improve consistency across the LPAs in Wales, although it is also intended that the Protocol should allow for a level of local flexibility.

WG has opened the draft protocol to consultation and the closing date for comments is Friday 20 May 2016.

The Council has its own planning protocol which it keeps under regular review, and on the whole the proposed protocol is in accordance with the Council's current one. However, WG's consultation document, in addition to the Draft Protocol, includes a series of questions (17 in total) for consultees to answer.

This report focuses on the differences between the Council's current protocol and the draft protocol and seeks comments and suggestions from Members in response to the specific questions about the draft protocol so that those comments can be attached to a report to PSG in order that the Council can provide a single response to the consultation.

RECOMMENDATIONS

1	To consider the report and the draft planning protocol and to provide comments and responses to WG's consultation questions so that those comments and responses can be considered by PSG and a single response to WG can be provided by the Council
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REPORT DETAILS

1.00	NATIONAL PLANNING PROTOCOL
1.01	A recent study by the RTPI into the operation of planning committees in Wales concluded that there was much variation of practice between committees across Wales and recommended a National Protocol be prepared.
1.02	WG prepared a draft planning protocol (see Appendix 1). The main aim of the protocol is to improve consistency across LPAs in Wales, although it is intended that the protocol should allow for some local flexibility.
1.03	WG has opened the draft to consultation and the closing date for comments is Friday 20 May 2016.
1.04	The Council has its own planning protocol which it keeps under regular review, and on the whole the proposed protocol accords with the Council's protocol. WG's consultation document includes 17 questions for consultees to respond to. This report focuses on the differences between the Council's protocol and the draft national protocol and seek responses from Members to these questions so the responses can be attached to a report to PSG so that the Council can provide a single response to the consultation.
1.05	The 17 questions referred to above are referred to below together with comments on any differences between the proposed protocol and the Council's current protocol.
1.06	Question 1: Do you agree with having a National Planning Protocol?
1.07	<p>Question 2 sets out the relationship that the proposed protocol has to the Members' Code of Conduct and also sets out rules about personal and prejudicial interests and the impact of such interests on Members' involvement in planning decisions.</p> <p>The draft protocol stipulates that where there is a personal and prejudicial interest the Member is not to participate, or give the appearance of doing so, in the making of a planning decision. The proposed protocol also specifically requests Members to notify the Monitoring Officer whenever they submit a planning application themselves and advises that a professional planning agent should be instructed to deal with the application.</p> <p>The Council's current protocol advises that Members should consult the Monitoring Officer or Senior Legal Officer whenever there is a potential personal or prejudicial interest. It does specifically state that Members can never participate in planning decisions where a personal and prejudicial interest arises but advises that Members should consult with the Monitoring Officer or Senior Legal Officer if in any doubt. Further, the</p>

	<p>Code of Conduct itself deals with the position where Members have a personal and prejudicial interest in respect of any meeting.</p> <p>Neither is there a requirement in the Council's current protocol to notify the Monitoring Officer of Members' own applications (although the requirement for Members to keep the Register of Interests up to date with written details of relevant interests is contained in the Council's current protocol).</p> <p>Finally, there is no specific recommendation in the Council's protocol that should Members submit an application for planning permission they should appoint a professional agent to deal with the application on their behalf.</p> <p>However, it is clear in the Council's current protocol that it is important for Members to seek legal advice from the Monitoring Officer or legal officer to the planning committee if they consider may have an interest, to declare a personal and prejudicial interest at any meeting of the Planning Committee that involves a Member's own planning application and take no part in the decision and to leave the meeting and unless granted a dispensation by this Committee.</p> <p>Question 2 states:-</p> <p>Do these proposals differ from the Protocol you have in place? Do you see any difficulties with adopting these proposals?</p> <p>The differences are set out above. In respect of any difficulties, it appears that the Council's protocol acknowledges the possibility that a dispensation may allow a Member to take part in the application, whereas the draft protocol does not.</p>
1.08	<p>Question relates to matters of natural justice, pre-disposition and pre-determination. The importance of recognising these principles pervades the Council's current protocol. The difference between the draft protocol and the Council's protocol is that the draft protocol specifically sets out the need for a Member to consider whether they are speaking as Local Member (in which case they may speak but not vote on an application) or as a Member of the Planning Committee (in which case they may both speak and vote on the application). Although the Council's current Protocol is clear about the need to keep an open mind in any planning decision, it may be that Members of the Planning Committee could find this detail helpful.</p> <p>Question 3 asks: Does the proposal regarding voting differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals? The difference is set out above and there do not appear to be any obvious difficulties in adopting this proposal as the importance of the principle of keeping an open mind in planning decisions is consistent with the Council's current protocol.</p>
1.09	<p>Question 4 and Question 5 both relate to pre-application discussions with applicants/developers/objectors.</p> <p>Question 4 asks whether Members are currently involved in the pre-application discussions and Question 5 asks whether the proposals within</p>

	<p>the Protocol in respect of contact with applicants/developers/objectors would cause any difficulties for the Council in adopting those proposals.</p> <p>The draft protocol is consistent with the Council's current protocol in this respect.</p>
1.10	<p>Question 6 and Question 7 ask whether proposals relating to advice on lobbying of, or by, Councillors differ from the Council's own arrangements and whether there would be any difficulties with adopting the proposals contained in the draft protocol.</p> <p>The Council's current protocol is consistent with the proposed draft protocol in this respect.</p>
1.11	<p>Question 8 asks if the Council can see any difficulty with adopting proposals relating to site visits.</p> <p>The draft protocol is consistent with the Council's protocol save that in addition the Council specifically advises that Members with personal and prejudicial interests are not to attend site visits. This advice is not contained within the draft protocol.</p>
1.12	<p>Question 9 asks whether the authority allows public speaking and if not why not.</p> <p>The Council does allow public speaking.</p> <p>The draft protocol then sets out the proposed arrangements for public speaking (which includes provision for members of the public to speak for 5 minutes) and Question 10 asks if those proposals differ from the Council's arrangements or if the Council sees any difficulties with adopting those proposals.</p> <p>The draft protocol differs from the Council's protocol both in respect of the proposed arrangements for speaking and in that the Council does not have details of arrangements for public speaking at Planning Committee contained with their planning protocol. The Council has a separate protocol/advice note on public speaking at Planning Committee.</p> <p>The Council only allows public speakers 3 minutes to speak at planning committees and also only allows 1 public speaker in favour of an application and 1 public speaker against an application. The Council's procedure for public speakers explains that it will normally be on a first come first served basis and encourages members of the public wishing to speak to liaise with each other in order that a single person can attend to represent others' views.</p> <p>The draft protocol also proposes a different order for public speakers. The draft protocol proposes that the applicant speaks first, the objectors speak second and then the applicant can respond. The Council requires the objectors to speak first, the applicant (or other person supporting the application) to speak second. There is therefore no right for the applicant to respond as the applicant has had the opportunity to listen to the</p>

	<p>objectors before they speak.</p> <p>Where the Council is clear that it will only allow a single public speaker to represent each of the views of the applicant/objectors, although the draft protocol encourages speakers not to repeat the representations of previous speakers it does not provide a limit on the number of speakers. As referred to above, the Draft Protocol also allows 5 minutes for public speakers as opposed to 3 minutes.</p>
1.13	<p>Question 11 asks how proposals in the Draft Protocol relating to the role of officers and decision making differ from the arrangements which the Council has in place, and asks for any perceived difficulties in adopting those proposals.</p> <p>The only obvious difference between the proposed protocol and the Council's current protocol is that there is specific advice in the draft protocol that a Member should not vote or take part in a discussion on a proposal unless they have been present to hear the entire debate. Although this is not specifically stated in the Council's current protocol it is clear from the advice in the current protocol that Members should consider all material planning considerations in reaching their decision.</p>
1.14	<p>Question 12 asks for the Council's views on having a cooling off period.</p> <p>This is a practice that a number of other Councils have in place, whereby if the Planning Committee reaches a decision contrary to officer recommendation (whether or not the recommendation is for approval or refusal) then Members should defer consideration of the matter to the next meeting of the Planning Committee so that a report can be taken to the Committee advising of issues in the proposed decision.</p> <p>The Council's protocol does provide that should the legal officer attending a Planning Committee consider that any legal issues arising from a decision require a report to be taken to the next Committee then he or she can do so. However, this is clearly different from having a specific cooling off procedure.</p> <p>Of all the differences between the draft protocol and the Council's protocol it is likely that this provision would be of most interest to members of the Council's planning committee as it is a clear difference in practice to the current practice and decisions of the Council's committee against officer recommendation are not uncommon.</p>
1.15	<p>Question 13 relates to duties of the Chair of Planning Committee. It asks whether the duties set out are different from the duties of the Council's Chair. The question also asks whether there should be training for the Chair of the Planning Committee as a specific requirement. The Council's protocol does not contain specific reference to the duties of the Chair. However all of the duties set out in the draft protocol are consistent with the practice of the Council's Chair of their Planning Committee.</p> <p>There is a requirement in the Council's protocol for all Members of the Committee to attend compulsory Planning Training. There is a specific requirement that during the course of any year Members of the Committee</p>

	must have attended at 75% of the training.
1.16	<p>Question 14 relates to the role of Members at Planning Appeals. It asks whether the proposals differ from the arrangements that the Council has in place and whether there would be any perceived difficulties in adopting these proposals.</p> <p>The only difference between the draft and the current protocols is that there is no specific requirement in the Council's protocol that a Member of the Planning Committee is not to make representations at the Appeal in opposition to the decision of the Committee as a whole, as is advised in the draft protocol.</p>
1.17	<p>Question 15 asks whether the Council currently requires Planning Committee Members to undertake training before participating in decision making. Further, the question asks whether the Council would support a national approach to the provision of training resources.</p> <p>As referred to above the Council's current Protocol requires Members of the Planning Committee to attend 75% of planning training organised by the Council in any calendar year. However, the Council's current protocol also requires that any Member who attends as a member of Planning Committee should first have had some core training covering Planning Policies, Procedures, Law and the protocol itself</p>
1.18	<p>Question 16 asks whether the proposals in the draft protocol in respect of customer care arrangements differ from the Council's current arrangements and whether the Council perceives any difficulty with preparing a local procedure as set out in paragraph 15.1 of the draft Protocol. This is in fact a typographical error and should read 17.1.</p> <p>Apart from the fact that the Council has a different practice and procedure in respect of public speakers (and public speaking is referred to paragraph 17.4 of the draft protocol) the advice set out is consistent with the Council's current approach.</p> <p>Paragraph 18 of the draft Protocol contains proposed advice on attending and speaking at Planning Committee. The difference between public speaking as proposed in the draft protocol and the Council's current practices have been referred to at 1.12 above.</p>
1.19	Question 17 asks for any additional comments not covered in the Questions above.

2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
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3.01	WG have issued a draft protocol and consultation questions to the public, requiring a response by the 20 May 2016. The Council's PSG is to be consulted on the Committees' response so a single response can be submitted on behalf of the Council.
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4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	Draft planning protocol and consultation questions and the Council's current protocol

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	As referred to in the report. Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew_georgiou@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	LPAs Local Planning Authorities PSG The Council's Planning Strategy Group RTPI Royal Town Planning institute WG Welsh Government