

Appendix 17 – Code of Good Practice for Councillors involved in the Planning Process

1 Summary

1.1 One of the key purposes of the planning system is to balance private interests in the development and use of land against the wider public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable planning reasons. The aim of this Code of Good Practice is to promote public confidence in the planning decision making process.

1.2 If Members do not abide by this Code of Good Practice, they may put:

- the Council at risk of proceedings on the legality or maladministration of the related decision, and;
- themselves at risk of being the subject of a standards complaint, or; if the failure is also likely to be a breach of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

2 When does this Code apply?

2.1 This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes both Planning Committee (i.e. Planning Committee A and Planning Committee B) meetings, any meetings of the full Council when exercising the functions of the Planning Authority, and less formal occasions, such as meetings with officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as to planning applications. Although much of the Code applies only to members (including substitute members) of the Planning Committees, some aspects affect any Member who becomes involved with a planning matter.

- 2.2 This Code of Practice supplements the Council’s Code of Conduct for Members (“the Code of Conduct”), and gives detailed advice on dealing with planning issues.
- 2.3 If Members have any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer or Deputy Monitoring Officer, and preferably well before any meeting takes place.

Advice to Members:

Do apply the rules in the Code of Conduct first.

Do then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Code of Conduct for the purposes of planning control.

Do seek early advice if in doubt.

3 Dealing with Interests under the Code of Conduct

- 3.1 Members must always declare disclosable pecuniary interests other registerable interests and non-registerable interests on a matter in accordance with the Code of Conduct. All Members must follow these rules, not just members of the Planning Committees.
- 3.2 An Other Registerable Interest arises where the business directly relates to the financial interest or wellbeing of one of the Member’s Other Registerable Interests as set out in Table 2 (“Other Registrable Interests”) of the Code of Conduct.
- 3.3 A Non Registerable Interest arises where a matter **directly relates** to a Member’s financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1 of the Code Of Conduct) or a financial interest or well-being of a relative or close associate.

- 3.4 If a Member has an Other Registerable Interest or a Non Registerable Interest the Member may register to speak on the matter but must not participate as a member of the committee and must not remain in the room unless granted a dispensation under the Code of Conduct.
- 3.5 Where a matter arises at a meeting which **affects** a Non Registrable interest you may be able to speak and vote on the matter if the test set out in paragraphs 8 & 9 of the Code of Conduct is satisfied.
- 3.6 A disclosable pecuniary interest arises when you have an interest, or your partner has an interest which falls within the descriptions set out in Table 1 (Disclosable Pecuniary Interests) of the Code of Conduct. It is a criminal offence to participate in a Council meeting if Members have such an interest and have not been granted a dispensation.

Advice to Members:

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. Disclose your interest at the commencement of discussion on that particular matter. If in doubt, you should always seek advice from the Monitoring Officer in advance of the meeting.

Where your interest is a disclosable pecuniary interest and you have not obtained a dispensation:-

Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.

Don't get involved in the processing of the application*.

Don't use your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so.

*A Councillor who has a disclosable pecuniary interest in a matter is permitted to seek to persuade Planning Officers of the merit of the application in the same way as a member of the public but should be careful to avoid placing pressure on an Officer for a particular recommendation.

4 Keeping an open mind

- 4.1 Councillors need to avoid bias or predetermination or any appearance of bias or predetermination before making a decision on a planning matter. Members of a Planning Committee must not make up their minds before they have all relevant material and arguments before them at a Planning Committee meeting. The use of a political whip is not permitted for decisions on planning applications.
- 4.2 Members of a Committee are entitled to feel predisposed towards a particular decision before it comes to Planning Committee, but must still be willing to consider and weigh all material planning considerations presented at the meeting before deciding on how to vote. Predetermination arises when Members' minds are closed (or reasonably perceived to be closed) to the consideration and weighing of the relevant factors. Where such concerns arise, a Member will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Member has a closed mind. In such circumstances, there is a risk of the whole decision becoming vulnerable to legal challenge. It also risks a public perception being created of unfairness in the planning process.
- 4.3 The Localism Act 2011 has built on clarification of the law provided by the Courts in a number of cases and Members can take some comfort that they will not be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. Nevertheless it remains the case that Members must not have closed their mind to possible alternative decisions and must be prepared to consider representations made and the advice of

Officers and listen to the debate before reaching a final view. A Member in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Member was predetermined or biased.

Advice to Members:

Don't make up your mind, or appear to have made up your mind, on how you will vote on any planning matter until you have heard the Officer's presentation and all the evidence and arguments at the Planning Committee when the matter will be considered. If you have predetermined your position or have given that impression, you should not take any part in the decision on that matter.

4.4 A member of a Planning Committee who is also a Parish Councillor may already have been consulted on a planning application at a Parish Council meeting. It is permissible to express a view at a Parish Council meeting on a matter and still participate at a Planning Committee so long as a Member has not closed their mind to reaching a different view. It is good practice in these cases for the Member to:

- make it clear during the discussion at the consultee body that their views are expressed on the limited information before them only,
- reserve judgement and the independence to make up their own mind when it comes before the Planning Committee once they have considered all of the relevant information,
- not in any way commit themselves as to how they or others may vote when the proposal comes before the Planning Committee, and
- disclose the Other Registerable Interest regarding their membership of the Parish Council when the Planning Committee comes to consider the proposal.

- 4.5 If a Member has already made up their mind they must not speak or vote on the business but they are not legally required to withdraw from the meeting (unless they also have an interest under the Code of Conduct which would preclude them from so doing). However, they may prefer to do so for the sake of appearances. If they decide to stay in the meeting they should explain that they do not intend to speak and vote because they have (or could reasonably be perceived as having) judged the matter elsewhere. Such statements may be recorded in the minutes.
- 4.6 Executive Members may have been involved in promoting a particular development in their role as Executive Members for the Service. Whilst a Member of a Planning Committee would not be required to withdraw simply because they are also an Executive Member, if an Executive Member also sits on Planning Committee it may be difficult for them to demonstrate objectivity in dealing with an application relating to that development. They must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias or pre-determination. Indeed, the Member may be seen as an advocate on behalf of the Council for the development in question. In those cases the best course of action would be for the Executive Member to withdraw from the Planning Committee for that matter.

5 Contact with Applicants, Developers and Objectors

- 5.1 Members of a Planning Committee should discourage applicants or agents from approaching them in any way, should minimise social contacts with known developers and agents and should refrain altogether from such contacts when developments are contemplated or a planning application has been received.
- 5.2 All Members should refrain from involving themselves in discussions with developers or potential applicants at the pre-application stage of proposals unless such discussions are part of structured and recorded arrangements with Officers and comply

with this Code, the Code of Conduct and rules on bias and predetermination.

5.3. If an approach is received from an applicant/agent in relation to a particular planning application or a matter that may give rise to a planning application, the Member should:

- Refer the applicant or agent to the relevant Officers of the Council, and notify Officers of the approach.
- Avoid giving any commitment or impression of a commitment or that they hold any particular view about the development or the future of the site in question.
- Confine themselves to providing information on the Council's general planning policies or procedures only, where the Member is fully aware of these.
- If they do express an opinion they should make it clear that they have not committed themselves to vote in accordance with those views and will only be in a position to take a final decision after having heard all the relevant information and arguments at Committee.

5.4 When any Member speaks at a meeting of the Committee on the subject of a particular planning application, they should disclose the fact that they have been in contact with the applicant/agent, if this is the case. Members are able to articulate their own views on proposals, but should not speak on behalf of the applicant or the agent who will have their own opportunity to speak to Committee.

5.5 Any written information received by a Member of the relevant Committee from the applicant or agent, objectors or any other third party, should be passed or copied immediately to the relevant Planning Officer and declared at the start of the consideration of the particular application.

Advice to Members:

Do seek to minimise social contacts with known developers particularly when the developer is known to be contemplating development in the City.

Do refer an applicant, developer or objector who approaches you about a planning application to Officers, if they need planning, procedural or technical advice.

6 Contact with neighbours, objectors, supporters, third parties or fellow Councillors

- 6.1 In order for the planning system to work effectively public concerns must be adequately aired. It is an important part of a Member's role to listen to residents' views and put these views forward within the Council. However, it is important that Members of the Planning Committees make decisions based on the full facts having considered all representations made and all other relevant considerations. Members will usually need a report from Officers to help them to do this.
- 6.2 Members of a Planning Committee should not give the impression that they have made up their mind about a particular matter in advance of the meeting. Discretion is always advisable. A good approach is to say something like: "From what I know at the moment I support (or have reservations about) this application, but I won't make a final decision until I have all the facts before me at Planning Committee".
- 6.3 All Members should advise anyone lobbying them that the Committee can only effectively consider representations if they are made in writing to the Chief Planning Officer and or Director of Environment, Highways & Transport. Members can also advise objectors of the rights they have for speaking at meetings. If there are technical issues or alternatives to be considered, then Members should either ask the applicant/objector to raise these

matters with Officers or ask officers to consider such matters when reporting to Committee.

- 6.4 No Member should accept gifts or hospitality of any value from anyone who is involved or affected by a planning proposal. Members should inform the Monitoring Officer if they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 6.5 No Member should take part in negotiations with applicants or potential applicants regarding their proposals for development except where such negotiations are part of a structured arrangement with Officers.

Advice to Members:

If you are lobbied:

Do explain that you are not in position to express a firm intention to vote one way or the other.

Do explain how representations can be made formally.

Don't accept any gifts or hospitality.

7 Lobbying by Members

- 7.1 Members are quite entitled to join general interest groups which may have an interest in planning matters such as the Civic Society or the Victorian Society. If Members are present at a Committee meeting where a group to which they belong has adopted a view on a particular matter then they need to declare an Other Registerable interest when the matter is discussed.
- 7.2 There may be circumstances where a political group has a policy commitment to a particular development. It may have been contained within the party's manifesto. This alone does not prevent a Member participating in decision making so long as they have not closed their mind to considering the planning arguments

and have the independence to make up their own mind on the planning proposal.

- 7.3 If a Councillor, whether or not a member of the Planning Committee, speaks on behalf of a lobby group at a Committee meeting they should withdraw from the meeting after the public speaking session.

8 Site Visits

- 8.1 Site visits can play an important role in ensuring that Members make decisions on a sound understanding of the relevant issues. However, care must be taken to ensure that site visits are not misused as a lobbying device to help ensure a particular outcome in respect of controversial applications or to defer consideration of an application to a subsequent meeting. Site visits should only be requested where there is a clear and substantial benefit in having one. Site visits will be virtual unless the Chair of the relevant committee considers it necessary for an in person site visit due to the complexity of a specific site. In person and virtual visits should focus precisely on the observation of site factors which are relevant to the decision. Members should ensure that they have seen all aspects of the site during the visit and should ask to see further aspects of the site should they require. Should there be a need for in person visits, Members should at all times visit the site as a single group. Additional information relating to site visits is contained in section 4 of the Protocol annexed to this Code.
- 8.2 While visiting sites Members must not accept any form of gift, hospitality or refreshment.
- 8.3 Members of a Planning Committee should not normally accept invitations to visit a site unless this is in the company of a planning officer. This does not prevent Members from going alone to view a site from public land.
- 8.4 Councillors have no rights to enter on private land. A Councillor might be invited to enter the site by the owner. It is not good

practice for a member of a Planning Committee to do so as this may give the impression of bias. If a Member feels that they need an explanation of the proposal then they should request a formal site visit by contacting the Case Officer at least 10 days before the Committee meeting.

Advice to Members:

Don't request a site visit unless you feel it is strictly necessary.

Do ensure that you comply with the Protocol for site visits annexed to this Code.

Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

Do ask the Officers at the site visit questions or seek clarification from them on factual matters which are relevant to the site inspection.

Don't express opinions or views on the proposal to anyone.

Don't enter a site which is subject to a planning application unless you can comply with the good practice rules in this Code.

9 Decision Making

9.1 The Council's Constitution specifies that certain applications must be brought before the relevant Planning Committee and others may be determined by Officers. Members, including those who are not on the Committee, can request that a particular application should be brought to Committee rather than being determined by Officers under delegated powers.

9.2 Members should ensure that they only request that an application be brought to Committee in accordance with Constitutional

requirements, and for proper planning reasons which are reported to the Committee.

- 9.3 In making decisions on planning applications, the law requires the application to be determined in accordance with the development plan and the requirement to comply with national planning guidance unless material considerations indicate otherwise. Adequate planning reasons must be given for any decision/conclusion. It is particularly important to ensure that these are fully articulated and recorded prior to the vote and must be recorded where a decision is made contrary to an officer recommendation or contrary to established policy. Where a decision is made contrary to policy it is the Members' responsibility to explain their reasons in full. Pressure should never be put on Officers to "go away and sort out the planning reasons".
- 9.4 Members must come to a decision after due consideration of all the information reasonably required, upon which to base a decision. Members should not participate in a vote if they have not been present for the entire item including the Officer's presentation and any public speaking. During the meeting, Members should not attempt to answer e-mails, monitor or contribute to social media discussions or engage in any other activity which may distract them from giving the proceedings their full attention.
- 9.5 Members should ensure that they have had sufficient time to digest any new material which has been presented. Members may need to ask for an adjournment to do so. Occasionally it may be necessary to defer an item to allow for proper consideration or for additional information to be obtained. However, the Council has a duty to process applications without undue delay and applications should not be deferred as a delaying tactic or to put off making a decision because of the number of objectors to the proposals.
- 9.6 Messages should not be passed to individual Committee Members either from other Members or members of the public. This could create an impression that a Member is being improperly influenced.

Advice to Members:

Do come to meetings with an open mind and demonstrate that you are open-minded.

Do make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

Do come to your decision only after due consideration of all of the information reasonably required.

Do make sure that if you are proposing, seconding or supporting a decision that you clearly identify the planning reasons leading to this conclusion and can identify the supporting evidence.

10 Officers

10.1 Members, whether or not they sit on a Planning Committee, must not put improper pressure on any Officer to put forward a particular recommendation and should not do anything which compromises or is likely to compromise their professional integrity and impartiality. Doing so may be a breach of the Code of Conduct.

10.2 Planning Officers must act in accordance with Officer and professional codes of conduct. The Royal Town Planning Institute requires its members to fearlessly and impartially exercise their independent professional judgment to the best of their skill and understanding. Accordingly there may be occasions where Officers make recommendations which may be contrary to the views and wishes of Members.

Advice to Members:

Do not apply improper pressure on Officers to make a particular recommendation.

Do respect the professional obligations of planning Officers.

11 Members as developers or applicants

- 11.1 If a Member has an interest in land that may be the subject of re-designation or other decision in the Development Plan process, or if a Member, or someone with whom they have a close association is making a planning application to the Council, then they should discuss this at the earliest opportunity with the Chief Planning Officer or the Director of Environment, Transport and Planning. The planning application should contain a declaration (in the form of a covering letter) of the Member's position in relation to the planning application, so that all those consulted are aware of the relationship. The Chief Planning Officer or the Director of Environment, Transport and Planning will oversee the consideration of the application with the case officer, including any discussions that may involve other Members.
- 11.2 Any application by a Member will be reported to Planning Committee A or Planning Committee B as appropriate and will not be dealt with by an officer under delegated powers. The Member's interest should be made clear at the Committee.
- 11.3 If a Member's planning application comes before the Planning Committee they will have a disclosable pecuniary interest in relation to the application. This must be declared and means that the Member may not participate in the discussion or vote on the application. Government guidance suggests that the prohibition on discussing the item would prevent Members making representations to the Committee as an ordinary member of the public. While some lawyers have questioned this guidance there is a degree of uncertainty. The safest option would be for the Member to either seek a dispensation allowing them to make representations, or ask someone else to make those representations on their behalf.

12 Enforcement cases

12.1 Planning enforcement is particularly sensitive since it can ultimately result in Court proceedings. All Members are encouraged to report breaches of planning control to Officers or to support their constituents in doing so. They may seek updates on progress which is being made to resolve matters but should avoid playing too pro-active a role such as by involving themselves in meetings between Enforcement Officers and developers.

13 Member Training

13.1 In order to ensure that Members are fully aware of the requirements placed on them when sitting on Planning Committees it is the policy of the Council to require Members to attend prescribed training before sitting as a Member or Substitute Member. From time to time, the Council may also require Members to attend refresher training sessions.

Annex 1

Planning Committee Protocol

Purpose of the Protocol

- 1. Introduction**
- 2. Public Speaking Procedure**
- 3. Pre-Committee Matters including Site Visits**
- 4. Committee Agenda**
- 5. Order of Proceedings**
- 6. Decision Making**
- 7. Voting Procedures**
- 8. Following the Committee Meeting**
- 9. Review and Monitoring**

Purpose of the Planning Committee Protocol

This protocol has been adopted to ensure the highest standards of probity in the performance of City of York planning function. Consistency, fairness and openness are important qualities for any regulatory function and they are vital to the conduct of a planning committee.

The purpose of the protocol is:

- (a) To state how the Members of the Planning Committee will exercise those functions, including behaviour in relation to applicants, residents and other third parties;
- (b) To ensure a consistent and proper approach by all Members of the Planning Committee to the exercise of planning functions;
- (c) To ensure applicants and their agents, residents and other third parties are dealt with by Members of the Planning Committee consistently, openly and fairly;
- (d) To ensure the probity of planning transactions and the high standards expected in public office; and
- (e) To ensure planning decisions are made openly, fairly and in the public interest, in accordance with legislation and guidance.

The Localism Act 2011 sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. The Members' Code of Conduct sets out the general principles the Council has adopted. This Protocol relating to planning matters is intended to be supplementary to The Members' Code of Conduct and The Council's Constitution. Accordingly, the provisions of the Code of Conduct and Code of Good Practice for Councillors involved in the Planning Process continue to have full force and effect.

The aim of this protocol is to provide more detailed guidance on the application of the guidance in relation to planning matters.

Copies of this Protocol will be incorporated into the Council's Constitution and will be kept under review in accordance with paragraph 10.2 of this Protocol. Additionally, this Protocol will be publically available online.

1. Introduction

1.1 This Protocol applies to all meetings of the Council's Planning Committees (both Planning Committee A and Planning Committee B) in relation to the determination of planning applications and any other business dealt by the Planning Committees.

1.2 The determination of planning applications is a process involving the application of national, strategic, local and neighbourhood level planning policies within a legislative framework. Planning decisions can be appealed by unsuccessful applicants and challenged by way of judicial review by third parties. Complaints about maladministration and injustice can also be made to the Local Government Ombudsman. It is important that those involved in the determination of planning applications, and particularly officers and Members of the Planning Committee, act reasonably and fairly to applicants, supporters and objectors.

2. Public Speaking Procedure

- 2.1 This document sets out the procedures members of the public, Parish Councils and Councillors who are not members of the Planning Committee must follow when addressing the Planning Committee.
- 2.2 If members of the public have written to support, object to or comment on an application the Council will write to them about the date and location of the Planning Committee meeting where the application will be considered. Likewise, the Council will also notify all applicants (or their agents) whose applications are to be considered.
- 2.3 Anyone who has not made a representation on the application at the planning consultation stage, or who has made a late representation, will still be able to request to speak at Planning Committee in accordance with the Council's Public Participation Protocol but the Council will not write to them about the date and location of the Committee meeting. However, details of Planning Committee meetings are published on the Council's website.
- 2.4 Anyone who supports or objects to an application does not have to speak at a Planning Committee meeting. Representations are reported to the Planning Committee either in writing or verbally so it is up to the individual whether to attend or speak (in person or remotely).

Registering to Speak at Planning Committee

- 2.5 Anyone who wants to speak at Planning Committee (which for the avoidance of doubt includes Ward Councillors, and Town or Parish Councillors) must complete a 'request to speak at a public meeting form available at: by <https://www.york.gov.uk/form/SpeakAtCouncilMeetings>
- 2.6 A request to speak at a public meeting form must be received no later than 5pm two working days before the meeting takes place. For a Monday meeting, this would be 5pm on the previous Thursday. Requests to speak will not be carried forward to future Planning Committee meetings and therefore it will be necessary to register a

request to speak at a public meeting form for each and every Committee meeting.

Speaking Procedure at Planning Committee

2.7 At Planning Committee the Chair will introduce the item and ask speakers to address the Planning Committee in turn. Each speaker will be given 3 minutes. The number of speakers is at the Chair's discretion.

2.8 The five categories and order of speakers is as follows:

- i) **Objector(s)**
- ii) **Parish Council Representative(s)** - The Council expect the Parish Council representative to express the single, corporate view of that Council.
- iii) **Ward Councillor(s) not sitting as a Planning Committee Member**
- iv) **Supporter(s) who are not associated with the applicant or application** (for the avoidance of doubt this cannot include family of the applicant or agent).
- v) **The applicant and/or agent**

2.9 To assist the process those wishing to speak are requested to ensure they express their views clearly and concisely within the time allocated and any matters raised are relevant to the application. All those involved in public speaking are restricted to an oral presentation only.

2.10 The Chair of the Planning Committee may intervene, or vary the order of speakers, in the interests of efficiency.

2.11 Those addressing the Planning Committee will not be able to ask questions or join in the debate after their speaking time has elapsed. After a speaker has addressed the Planning Committee for 3 minutes, Members of the Planning Committee may, through the Chair, ask questions to speakers on points of fact and clarification before they debate an application. Speakers must not interrupt other speakers, nor interrupt the Planning Committee debate.

Items on the agenda

- 2.12 Items on the agenda will be dealt with, however there is a possibility that the applicant may withdraw the application or that the Planning Committee may defer consideration of an application for example to obtain further information.
- 2.13 The Planning Committee agenda is available 5 working days in advance of the meeting. The agenda and associated reports can be viewed on the Council's website.
- 2.14 Speakers are advised to familiarise themselves with the contents of the relevant Planning Committee report in the Committee Agenda prior to addressing the Planning Committee in order to avoid taking up Planning Committee time in repeating the Officer's comments.

Presenting new information

- 2.15 If speakers wish to present documents or photographs to the Planning Committee, the material must be submitted to planning.comments@york.gov.uk no later than 5pm on the second working day before the meeting. For a Monday meeting this would be 5pm on the previous Thursday. The Council will consider the information to ensure that there is no issue of impropriety, i.e. showing people or events in an unfavourable way, or defamation/slander for example.
- 2.16 The submission of paper documentation on the day of the meeting by applicants, agents and persons making representations to the Committee is not permitted and cannot be circulated in the meeting.

Material considerations

2.17 Relevant issues in considering planning applications (**material considerations**) can include (but are not limited to):

- The Development Plan
- Other planning policies
- National Planning Policy Framework and other Government advice
- Highway safety and traffic considerations
- Landscape impact
- Local amenity
- Noise
- Privacy (overlooking etc.)
- Conservation areas and listed buildings
- Archaeology
- Risk of flooding
- Loss or effect on trees and wildlife/nature conservation
- Case law and relevant previous decisions etc.

2.18 The Committee must only consider material considerations when determining planning applications.

Non-Material considerations

2.19 Issues which are irrelevant when determining planning applications (**non-material considerations**). This list is not exhaustive but gives examples of the types of issues that are not relevant when determining applications:

- Business competition
- Ownership disputes
- Reduction in property values
- Restrictive Covenants
- Moral objections
- Personal circumstances or private rights

- Matters controlled by other legislation e.g. Buildings Regulations, Licensing.
- The applicant's motives for making an application.
- Loss of trade elsewhere.
- Construction issues e.g. standard of workmanship, length of time taken to do work.
- Precedent e.g. unrelated decisions that have been made before.
- Complaints about procedures in dealing with applications.

2.20 An application submitted after development has been carried out has to be determined on its own planning merits like any other.

3. Pre-Committee Matters Including Site Visits

Site Visits

3.1 The site visit is for the Members of the Planning Committee to view aspects of an application site, it is a fact finding exercise for the Planning Committee. The prospect of a Planning Committee site visit should not deter Members of the Planning Committee from looking at a site themselves from any public vantage points in the same way that any other member of the public may do.

3.2 Although the site visit is a formal part of the decision making process, it is not where decisions are taken.

Arrangements for the site visit

3.3 Planning Committee site visits will take place before the application is considered by the Planning Committee. The date, time and order of site visits will be circulated to Members of the Planning Committee.

3.4 The committee visits will be virtual unless it is considered by the Chair that an in person site visit is necessary due to the complexity of the site.

3.5 If access onto the site is necessary, the applicant or agent will be informed of the site visit and asked to ensure that access is available.

Attendance at the site visit

3.6 The persons entitled to be present at all times during the site visit are Members of the Planning Committee and appropriate Officers as determined by the lead planning officer for the committee meeting.

Virtual Visits

3.7 Where the site visit is virtual Local Ward Members and Parish Council representatives may join the site visit group but only to observe and listen. Where this happens, the representative(s) will not be permitted to address the Planning Committee or its Members unless asked to identify physical features such as boundaries or access points.

3.8 If members of the public would like to request that site specific items are viewed they must make the planning case officer aware of this request before the site visit commences.

In person visits

3.9 For in person site visits the land owner or their agent or the applicant may need to accompany Members of the Planning Committee on the site visit. Where this happens that person will not be permitted to address the Planning Committee or its Members unless asked to identify physical features such as boundaries or access points.

3.10 Members of the public may attend and listen to the proceedings where these are conducted in public areas, but they have no right to enter private land or buildings.

Conduct at the site visit

3.11 The following procedures will be observed in the holding of all Planning Committee site visits:

- 3.12 Officers will arrange the in person site visit in advance with relevant parties. There is no right to enter on private land without permission of the land owner. Where appropriate, officers will obtain permission from the land owner or their agent for those invited to attend the site visit to enter the land. If permission is not given for Members and Officers and other interested parties to enter, the site will have to be viewed from the public highway/areas.
- 3.13 The Chair (or Vice Chair deputising for the Chair) will control proceedings throughout.
- 3.14 The Chair will explain that the purpose of the site visit is to obtain information relevant to the determination of the application. The Chair will summarise the proceedings and the constraints as set out below.
- 3.15 The Chair will introduce the Planning Officer who will describe the proposals to Members with reference to matters of fact and features on the land and the submitted plans/drawings and summarise the relevant issues and material considerations. It is expected that Members of the Planning Committee will already be familiar with the planning officer's report where one has been provided.
- 3.16 Members of the Planning Committee may ask the Planning Officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of the planned development.
- 3.17 Other officers may be present to provide other specialist/expert advice/information where relevant/required (e.g. Highways Engineers, Tree Officers or Environmental Health Officers Etc.).
- 3.18 Members of the Planning Committee will then be invited through the Chair to ask any questions of fact or seeking clarification from the Officers present. Members of the Planning Committee should not direct these questions to the applicant or others present. Any matters not to hand will be reported at the Planning Committee meeting. Discussion on the merits of the application will not be permitted, and Members of

the Planning Committee should refrain from making comments on the proposal.

- 3.19 During the in person site visit, no separate discussions regarding the application must take place with Officers or Members of the Planning Committee and either applicants, objectors or supporters. In order to assist in ensuring that Members of the Planning Committee receive the same information, they are required to keep together in one group with the Chair and the Planning Officer during the entirety of the accompanied site visit. They will not break-off to discuss the proposal separately with residents or the applicant.
- 3.20 During the in person site visit, Officers and Members of the Planning Committee will not accept any representations (including verbal presentations, documents, letters or petitions) from applicants, objectors or supporters. Any representations should be sent to the Planning Department by email to: planning.comments@york.gov.uk and these will be reported at the relevant meeting of the Planning Committee.
- 3.21 No hospitality will be accepted by Officers and Members of the Planning Committee from the applicant or any other interested party present at the site visit.
- 3.22 The Chair will conclude the site visit. Where Members of the Planning Committee attend an in-person site visit they will leave the site promptly, as a group, and refrain from talking to the applicant, objectors or other interested parties. No indication of the views of Members of the Planning Committee or the likely outcome of the Planning Committee's deliberations on the application will be given. To do so might imply that a Member's mind is already made up.
- 3.23 If Members of the Planning Committee require further information or clarification of any aspect of the development, the officer(s) attending the site visit will be asked to ensure that such information is available by the time the application is considered by Members of the Planning Committee at the relevant meeting of the Planning Committee.

Pre-Committee Briefings

3.24 Pre-committee briefings will be held with the Chair and Vice Chair and relevant Officers. The purpose of the pre-committee briefing is to update the Chair and Vice Chair on the applications to be presented at the next Planning Committee meeting and to go through any amendments/speakers etc. following dispatch of the formal agenda.

4. Committee Agenda

4.1 Each planning application for a consideration by the Planning Committee is the subject of a written report with an officer recommendation. In addition to the report, officers will present the item for consideration together with illustrative material to explain the scheme. The planning application itself is available to view on Public Access at [Simple Search \(york.gov.uk\)](https://www.york.gov.uk/simple-search) under the relevant application number or using the address search function.

4.2 The Planning Officer will also present to the Committee any relevant additional information that has been received prior to the meeting but after publication of the agenda.

5. Order of Proceedings

5.1 Generally, Planning Committee meetings take place at West Offices, however virtual Planning Committee meetings may also be utilised where situations facilitate them. The time of the meeting is stated on the agenda papers and published in the Diary of Meetings on the Council's website.

5.2 At the discretion of the Chair, the order of business on the agenda may be varied at the meeting with the agreement of the Planning Committee.

5.3 The procedure for considering each item shall be as follows:

- The Planning Officer shall provide an update on any pre-Committee updates and then introduce the application.
- Public speaking in accordance with the Public Speaking Procedure (as set out in paragraph 3 of this Protocol will take place).
- The Planning Officers will address, where necessary, any issues raised during public speaking and respond to questions from Members of the Planning Committee.
- The Planning Committee will consider the application and reach a decision.
- Advice may be provided by Planning Officers and/or the Legal Officer at any time as necessary.

5.4 Members should raise any queries they may have on an application with the Chief Planning Officer as soon as possible prior to the meeting, including the need for additional information. This can help identify issues early on and help to make sure that issues do not come to light for the first time at Committee. A 'no surprises' at Committee approach should be the aim.

6. Decision Making

6.1 In coming to a decision on a planning application, a Member of Planning Committee must:

- Come to the meeting with an open mind;
- Not communicate with anyone (except Officers, other Planning Committee Members, and public speakers through the Chair) orally, electronically, in writing or by any other means during the proceedings of the Planning Committee;
- Come to a decision only after due consideration of all the information reasonably required to base a decision upon;
- Not take part in the debate or vote on a proposal unless they have been present for the entire item including the Officer's presentation and any public speaking, and
- Ensure that if they are proposing, seconding or supporting a decision contrary to the Officer's recommendation or the Development Plan,

that they identify and understand the planning reasons leading to their conclusion and that they consider any professional advice given.

6.2 Reasons must be given before a Secunder to the proposal is sought and the vote is then taken and recorded if the proposal is contrary to or an amendment to the Officer recommendation.

7. Voting Procedures

7.1 The Chair of the meeting will usually bring the Planning Committee to a vote promptly on the officer recommendation in the first instance, where they consider that there has been sufficient debate on the item.

7.2 All items on the agenda will require a decision being taken on them and cannot be undetermined (unless they are deferred).

Decisions contrary to the Recommendation

7.3 A motion to go against the recommendation should usually only be considered after a vote on the recommendation (or an amendment to the recommendation) has taken place. Where a motion to go against the recommendation (or an amendment to the recommendation) set out in the report is proposed, material planning reasons for voting against the recommendation must be given. When the recommendation is not supported, a new motion to either grant or refuse or defer the application must be moved and seconded. However, before a new motion is proposed, the Committee must first receive advice from the Chief Planning Officer or their representative, as to what form a new motion could take. That advice will be based upon the material planning considerations that have been discussed by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge.

8. Following the Committee Meeting

8.1 The decisions of the Planning Committee must be recorded in the minutes of the meeting and published on the Council's website (for interested parties who cannot attend).

8.2 If an application for planning permission has been refused, or permission has been granted with conditions imposed, an applicant can appeal to The Planning Inspectorate via their website:
<https://acp.planninginspectorate.gov.uk/>

8.3 The decision notice issued by the Planning Department will be accompanied by information on how to appeal. There is no 'third party right of appeal', so only the applicant may appeal against a decision made.

9. Review and Monitoring

9.1 This Protocol will be monitored and reviewed annually by the Chief Planning Officer and Chair and Vice Chair of the Planning Committees to ensure it remains current and relevant to the operational needs of those Committees.

9.2 As this Protocol will be incorporated into the Council's Constitution, any proposed changes will be reported to the Audit and Governance Committee for information and to Full Council for approval and immediate implementation.