

Committee(s):	Date(s):
Planning & Transportation Committee	17 November 2020
Policy & Resources Committee	19 November 2020
Subject: Planning Protocol Update	Public
Report of: Town Clerk, Director of the Built Environment and Comptroller and City Solicitor	For Decision
Report Author: Deborah Cluett, Comptroller and City Solicitor's Department	

Summary

This report recommends that the Planning Protocol be amended to reflect current case law and procedural updates, and particularly to address the recent judgment in the Holocaust Memorial case¹ in respect of local authorities' own developments.

Recommendations

That the Planning and Transportation Committee :-

- (i) recommends to Policy and Resources Committee that the amendments to the Planning Protocol shown tracked at Annexure 1 to this report be approved
- (ii) Authorise the Chief Planning Officer and Development Director to prepare any necessary Regulation 64(2) Handling Note in respect of any development proposals promoted by the City.

That the Policy and Resources Committee agree the recommendation of Planning and Transportation Committee at (i) above.

Main Report

Background

1. The current Planning Protocol was updated in 2014 and is at Annexure 1 (with proposed updates shown tracked).

Proposed Updates regarding Planning Applications submitted by the City Corporation.

¹ London Historic Parks and Gardens Trust v Secretary of State for Housing Communities and Local Government [2020] EWHC 2580 (Admin)

2. In early October judgment was handed down in the Holocaust Memorial case. This considered the acceptability of Handling Arrangements adopted by the Ministry of Homes, Communities and Local Government (“MHCLG”) to deal with the consideration of a planning application “called in” by MHCLG where the application was also promoted by MHCLG. The case examined whether the Handling Arrangements complied with the requirement in Regulation 64(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 to ensure a separation of functions where the same body is both bringing forward the proposal and deciding on it.
3. Until the judgment, it was established practise (based on case law) that where a local authority is both making a planning application and deciding it, including in EIA cases, the necessary separation of functions is achieved through separate committees.
4. However, the judgment found that in the MHCLG Holocaust Memorial case, separation of persons (between those responsible for bringing forward the proposals and those responsible for deciding the planning application for the proposals) is also required in EIA cases. In addition, a binding Handling Note setting out certain principles and practises to give effect to the separation of functions should be published in respect of each EIA application made by an authority to itself
5. It is therefore recommended that the existing Planning Protocol be updated at **paragraph 8(e)** to ensure that it reflects the interpretation of the requirements which have emerged from the judgment in respect of EIA proposals. The proposed amendment includes a prohibition against any officer or member responsible for promoting a proposal also exercising any planning functions in respect of the proposal, and a requirement for a Handling Note identifying the persons exercising the respective functions.
6. Although the judgment was concerned with a planning application for EIA development and with the application of regulation 64(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 it is the view of your officers that it could be argued that similar principles should apply when determining applications for non EIA development. In the circumstances officers recommend that the proposed handling arrangements should be applied to all planning applications which the City Corporation make to themselves as planning authority. This approach has been endorsed by Leading Counsel.

Other Proposed Updates

7. While updating the Planning Protocol in respect of the City’s own applications, the opportunity to refresh it has been taken in regards to updated cross references to the Code of Conduct, and in regard to Member meetings.
8. **Code of Conduct: Paragraph 1.c** of the Planning Protocol refers to the Code of Conduct. Since the Planning Protocol was last updated the Code of Conduct has been revised (including following consideration of the recommendations of the Committee on

Standards In Public Life (“CSPL”) report on Local Government Ethical Standards.)² It is proposed to slightly amend **paragraph 1.c** to reference the current Code of Conduct and to provide a link to the Code of Conduct and guidance (rather than Appendices) so that any further Code of Conduct and guidance updates will be incorporated without need to amend the Planning Protocol.

9. **Member Meetings:** The Planning Protocol currently advises at **paragraph 4** that officers can be asked to attend meetings between members and applicants/objectors, and a follow up letter recording the meeting provided. It is proposed that **paragraph 4** of the Planning Protocol be updated to provide that officers should attend meetings with members and meeting notes should be taken. Reference is also included to meeting records being disclosable under the Freedom of Information Act 2000 or Environmental Information Regulations 2004. This update makes the meeting guidance in the Planning Protocol consistent with arrangements adopted by officers, as set out in the Pre-Application meeting information which has been more clearly set out since the Planning Protocol was last revised.

Proposals and conclusion

10. The amendments to the Planning Protocol shown tracked in Annexure 1. are recommended. These include restrictions on members and officers with responsibility for promoting proposals from participating in any Local Planning Authority functions in respect of the proposal. The amendments also require the preparation of a binding Handling Note in each case of the authority’s own applications and include a Template Handling Note. Authority is sought for the Chief Planning Officer and Director of Development to prepare a Handling Note in each case where required
11. Amendments are also recommended to reference the most recent Code of Conduct and in respect of member meetings.

Appendices

Annexure 1 – Planning Protocol

Background Documents

City of London Pre-Application Meeting Request Form June 2020

Deborah Cluett

Assistant City Solicitor

T: 02073321677

E: deborah.cluett@cityoflondon.gov.uk

² CPSL is a non-departmental advisory body of the government established to advise the Prime Minister on ethical standards across public life in England.