

# Planning Panels Protocol

Draft Update May 2021

**(IF APPROVED THIS PROTOCOL WOULD SUPERSEDE THE PLANNING PROTOCOL ADOPTED FOR PLANNING AND TRANSPORTATION COMMITTEE AND THIS WOULD BE STATED IN THE FINAL DOCUMENT)**

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## Part 1 – Introduction

### 1. Introduction

- a. This Protocol relates to the way in which the Planning Panels exercise their functions on behalf of the City of London Corporation as Planning Authority for the City. The Protocol has been prepared to guide Members and Officers and to inform the public generally of the high standards of ethical conduct adopted by the City Corporation in the discharge of its statutory planning functions of determining planning applications, applications for listed building consent, and related matters to give effect to such determinations.
- b. The Protocol aims to ensure that the Panels act reasonably and openly in dealing with planning matters; to protect the Court of Common Council and individual Members from allegations of unfairness, findings of maladministration and legal challenge; and to preserve public trust in the integrity and fairness of the planning system.

- c. The Code of Conduct for Members sets out the general provisions which must be complied with in all decision making and must be applied in relation to planning decisions.

### Members Code of Conduct

The Code of Conduct is supplemented by Guidance to Members on the Code of Conduct

### Guidance to Members

This Protocol is intended to supplement the Code of Conduct and DCLG Guidance on Openness and Transparency on Personal Interests specifically in the context of planning decisions and must be read in conjunction with Standing Orders.

### Guidance on Openness and Transparency on Personal Interests

- d. In this Protocol the word ‘must’ is used to mean it is a specific legal or regulatory requirement which must be complied with. The word ‘should’ is used for advice or recommendations which are regarded as good practice.**

## **Part 2 – Planning Panels**

### **2. The Panels**

- a. The Panels are area-based sub-committees of the Planning & Transportation Committee comprising Common Councilmen for each Ward of the City within the Panel’s area together with one or more Aldermen. Each Panel will determine applications relating to sites in its “mirror” area (not within the areas for which those on the Panel are Members)
- b. The Committee on Standards in Public Life recommended that Members of Planning Committees should receive appropriate training. Appointment to the Panel creates a requirement for Members to undertake such training, both on appointment and periodically thereafter. The form of the training is to be agreed by the Committee and Members should not accept nomination for appointment on the Panel unless they are prepared to accept this responsibility. Members should familiarise themselves with this Protocol and the Code of Conduct.

### **3. General principle**

Members of the Panels must consider all planning applications objectively on the basis of evidence of relevant planning issues presented to them, the first consideration being compliance with planning policy. Non-planning considerations such as property values are not relevant and must be disregarded.

## **Part 3 – Pre-Committee Consideration**

### **4. Contact with applications and/or objectors**

- a. Approaches from applicants, potential applicants or objectors is a normal and proper aspect of the political process. However, unless the parties concerned exercise care and common sense, this can lead to the impartiality and integrity of Members being called into question. A Panel decision may be susceptible to judicial review where there is a real danger of bias. The Members for the wards where the application sites are

situated are free to engage with applicants and objectors as they consider appropriate (and subject to the Code of Conduct) and to represent their interests at Panel meetings.

- b. To avoid problems of bias or predetermination, discussions should take place within the following guidelines: -
- Members of the Panels in particular, must take care not to indicate they have made up their mind on an issue which will come before them for determination before they have heard and/or read all the evidence, and should make clear that any views expressed are personal and provisional.
  - Members should make it clear that they will not be in a position to make a decision until they have heard and/or read all the relevant evidence and arguments at the Panel meeting. The Committee report may contain issues previously unknown to Members and other aspects, not previously evident, may arise during the Panel's deliberations.
  - Where a meeting is arranged between a Member and an applicant or objector the Member should ask for an Officer to attend and make a record of the meeting. (Meeting records are disclosable under Freedom of Information Act/Environmental Information Regulations requirements unless statutory exemptions apply). If there is a contentious telephone discussion, it is recommended that the Member should make a note afterwards of what was said.
  - Officers may give an indication of the recommendation that is likely to be made to the Panel, particularly in the light of the provisions of the relevant planning policy, but it must be made clear that this will not bind the Panel to make a particular decision.
- c. Pre-determination - A distinction can be drawn between pre-disposition and pre-determination. A Member can quite properly be pre-disposed towards or against an application for a variety of good planning reasons. This is perfectly acceptable as long as the Member remains open to persuasion based on the evidence and arguments presented at the meeting. The Localism Act 2011 makes it clear that a decision maker is not to be taken to have had a closed mind merely because he did or said something which indicated the view he took, or might take, on the issue. It is recognised that decision makers may have views on certain matters. If, however, the Member approaches the meeting with a closed mind and has already reached a fixed view, then he could be deemed to have pre-determined the matter and should not vote.
- d. Notwithstanding the above, it should be possible for a Panel Member to assist members of the public in dealing with the planning process and explaining how they are able to make their views known.
- e. *Gifts and Hospitality* - Members should be very cautious about accepting gifts and hospitality from planning applicants, or objectors or other interested parties and must notify any acceptance in accordance with the Members' Code of Conduct and Guidance issued by the Standards Committee. Unless there are special reasons, the presumption should be that hospitality (other than routine refreshments offered in the ordinary course of business) and gifts are refused.

## **5. Members who do not sit on the Panel**

The City Corporation's Standing Orders permit Members who are not on the Panel deciding the application to attend the Panel meeting. This Protocol makes additional provision for Members for the Ward within which the application site is located to make oral representations to the Panel deciding the application for up to 10 minutes in accordance with Appendix 2. However, any Member who has a disclosable pecuniary interest in the matter being considered is prohibited from participating in discussion at the meeting and must not speak unless they have first been granted a dispensation by the Standards Committee.

## **6. Site visits and questions**

- a. The presumption is that Members have a general knowledge of the City that can be supplemented, as necessary, by the site descriptions set out in the reports submitted to the Committee. Therefore, site visits are not generally considered necessary.
- b. Site visits will be undertaken if Members of the Panel deciding the application or the City Planning Officer consider there are reasons for doing so. The decision to hold a Members' site visit will be recorded in the minutes of the Panel.
- c. Occasionally, Members may wish to hold site visits before the planning application is submitted to them for consideration. A decision to hold such a visit may be agreed in advance of the Panel meeting by the Chairman. Non-attendance would not preclude a Member voting on the matter.
- d. Site visits will consist of an inspection by Members of the Panel in company with the appropriate officers. Other than for reasons of access, visits should normally not be accompanied by applicants or objectors. If, however, the applicant, objector or agent is present, Members should avoid making any statements that could prejudice consideration of the application.
- e. A site visit is not a formally convened meeting of the Panel and, therefore, decisions cannot be taken. The following meeting of the Panel should be advised that the site visit has occurred.
- f. Where possible Members should give advance notice to officers of any additional information they intend to request or of any other concerns so that officers can seek to provide the information or clarification sought and minimise the risk of deferral and delay.

## **7. Briefings**

Occasionally, briefings on major applications are arranged by applicants for all Members of the Panel and/or the Planning and Transportation Committee and/or Common Council to facilitate general 'information gathering'. Officers should be in attendance and record of the meeting made. Attendance at such a briefing would not compromise the ability of a Member of the Planning & Transportation Committee to participate in the determination of the application.

## Part 4 – Panel Meetings

### 8. Interests

- a. Private interests should never be allowed to influence a Member’s decisions on matters the Member is asked to decide. Where a Member has an interest, they should never seek to use their position to advance that interest; and should avoid both impropriety and the appearance of impropriety.
- b. In considering planning matters, in common with all City Corporation business, Members should apply the Seven Principles of Public Life

*(Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; Leadership)* (See

[Code of Conduct](#)

Members should ensure that they leave the room during discussion and voting on matters if they consider their continued presence would be incompatible with the Seven Principles of Public Life

- c. A Member of the Panel deciding an application who is, at the same time, a Member of a City Corporation Committee responsible for a site or building that is the subject of an application does not, by that fact, have an interest that is disclosable under the Code of Conduct. However, where the other City Committee is responsible for promoting a proposal paragraph e. applies
- d. Particular care must be taken in determining planning applications for the development of land or buildings owned by the City Corporation so as to ensure that such an application is not subject to preferential treatment but is subject to the same rigorous evaluation as other applications
- e. In addition, regulation 64(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 requires that where a local authority is bringing forward a proposal, it must make appropriate administrative arrangements to ensure that there is functional separation between the persons within the authority responsible for bringing forward the proposal and the persons responsible for determining that proposal. Recent case law <sup>1</sup>has set out that the appropriate arrangements should include a published and binding Handling Note setting out handling arrangements which give effect to the following requirements:
  - (1) the planning authority functions should be undertaken by an identified internal entity within the authority including officers assisting in those functions with necessary resources and acting impartially and objectively;
  - (2) persons acting or assisting in the planning authority functions (both officers and Members) must be prohibited from being involved in promoting or assisting in the promotion of the application for planning permission

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

- (3) persons undertaking the planning authority function must not discuss the project with persons promoting the project (other than through formal channels appropriate to the planning application process)
- (4) persons involved in promoting the proposal must not give instructions or put pressure whether direct or indirect on persons discharging the planning authority function.

Appendix C sets out a template Regulation 64(2) Handling Note. This Note applies to applications which are not for EIA development. A bespoke Handling Note will be prepared and published by the City Corporation as local planning authority in connection with all City Corporation planning applications whether or not they are for EIA development.

## **9. Members' presence throughout the consideration of an item**

- a. Panel Members should be present for the full discussion of an item in order to be able to vote on it, as their decision should be based on all the evidence presented to them, including the City Planning Officer's introduction and any questions and discussion.
- b. A Member who arrives after an Agenda Item has commenced should seek and follow the advice of the Chairman as to whether he has arrived in sufficient time to be aware of the evidence presented.

## **10. Reports to the Planning & Transportation Committee**

- a. All applications considered by the Panels should be the subject of reports by the City Planning Officer.
- b. Such reports will include:
  - the substance of the objections and views expressed by respondents to the consultations
  - relevant Government advice, Development Plan policies and supplementary planning guidance, site or related history and any other considerations including technical aspects that are material planning considerations on which other City Corporation departments may have commented
  - a technical assessment which justifies the recommendation(s)
  - a recommendation (unless, in rare circumstances, the reason for making no recommendation to approve or reject is explained in the report)
  - reasons in the case of a recommendation for refusal and any necessary conditions (and reasons therefor) in the case of a recommendation for approval.

## **11. Decisions contrary to officer advice**

Where a decision on a planning application is made contrary to the recommendation(s) of the City Planning Officer sufficient information will be



required by the City Planning Officer to prepare the formal Decision Notice in accordance with the statutory requirements. The decision must be made on reasonable planning grounds which can be substantiated by relevant evidence, otherwise, in the event of an appeal, costs may be awarded against the authority. A statement as to how the planning authority has worked with the Applicant in a positive and pro-active manner must be provided in the Decision Notice. In the case of approval, any necessary planning conditions must be framed in the Decision Notice. How these requirements can be most appropriately met will depend on the circumstances. Guidelines for dealing with such cases are set out in Appendix A to this Protocol.

## **12. Public participation**

- a. Applicants, agents and objectors have the right to address the Panel in accordance with the approved Procedure for Public Speaking set out at Appendix B.
- b. Ward Members for the ward where the application site is located also have the right to address the Panel for up to 10 minutes in accordance with Appendix B
- c. The operation of the Procedure will be reviewed regularly to ensure that it continues to operate in an effective way.
- d. The Committee will take account of the material planning matters expressed (whether in writing or orally) when reaching a decision.

## **Appendix A - Guidelines**

### **Planning Application/Appeals**

#### **Determinations contrary to recommendations of the City Planning Officer**

These guidelines apply when a majority of Members do not consider that a planning application should be determined in accordance with the City Planning Officer's recommendation. The appropriate way of proceeding will depend on the circumstances but in most cases the following options and suggested actions will apply:

#### **1. Deferral**

- a. If further information is required or the Panel considers that minor change may make a scheme acceptable, the application may be deferred for decision at a later meeting. (This may need to follow further public consultation in respect of the change, depending on its impact).
- b. However, the requirement to determine planning applications within a fixed period and the implications of delay must be borne in mind in considering whether to defer.
- c. It may be necessary to defer a decision in the circumstances set out at 2.b.

#### **2. Refusing a planning application contrary to a recommendation to approve**

- a. The Panel should indicate reasons for refusal with sufficient clarity to enable clear and precise reasons (with reference to relevant policies) to be provided in the Decision Notice. The reasons indicated should be confirmed by the Chairman and minuted in full. However, it may well be that although the Panel has indicated clear reasons, the precise wording (including relevant policies) cannot appropriately be framed in the forum of the Panel meeting. In this case, the drafting of precise reasons may be delegated to the Town Clerk (after consultation with the City Planning Officer and the Chairman and Deputy Chairman), rather than reported back to the Panel for final approval.
- b. In exceptional circumstances, if the Panel is unable to indicate reasons for refusal with sufficient clarity to frame the Decision Notice (for example, due to their complexity or to the wide range of concerns expressed) it may be necessary to defer an application for a further report to enable detailed reasons to be framed and considered. In those circumstances it may be necessary for the Panel to reconvene at a special meeting as soon as possible to avoid undue delay in issuing the Decision Notice. Only those Members who attended the Panel meeting which initially considered the application will be eligible to vote at the reconvened meeting, and those Members should therefore make every effort to attend.

#### **3. Approving a planning application contrary to a recommendation to refuse**

Where the Panel wishes to grant planning permission contrary to a recommendation to refuse, the reasons should be clearly stated and minuted,

and the Panel should consider whether there are any planning conditions it would wish to see imposed. The drafting of appropriate conditions, including those specified by Panel, will normally be delegated to the City Planning Officer (unless Committee resolve otherwise), and reported to the Panel at its next meeting.

## **Appendix B - Rules governing public speaking at meetings of a Planning Panel**

1. In order to speak, members of the public must have submitted written representations on the relevant planning application at least 14 days before the Panel meeting.
2. There will be a maximum of 20 minutes public speaking time allotted to each planning application. This time is divided between the following categories:
  - a. Objectors – 10 minutes in total
  - b. Applicants, agents or supporters – 10 minutes in total
3. No person may speak for more than five minutes each. If there are more than two persons wishing to speak from category (a) or (b) they will need to organise themselves by appointing up to two spokespersons or agreeing to share the allotted 10 minutes in shorter slots between more people to enable more speakers to participate from that category within the allotted 10 minutes. In rare circumstances where there is considered to be an exceptionally wide range of different issues, the Chairman may, in his discretion, allow limited additional time.
4. **In addition to the speaking arrangements provided for at 1 to 3 above, any Member for the Ward in which the planning application site is located may (subject to their participation being in accordance with Code of Conduct for Members) speak for up to 10 minutes whether or not they have submitted written representations 14 days before the committee meeting.**
5. Anyone wishing to speak at the Panel meeting must register a request to do so with the City Planning Officer at least five working days before the meeting. This is to allow time for the City Planning Officer to alert those wishing to speak if it is necessary to organise themselves as set out in paragraph three, and to allow time for organisation.
6. All parties on registering a request to address the Panel must submit a written statement of their case no later than 3 working days before the Panel meeting in order that any factual or new points can be investigated prior to the meeting and to facilitate the organisation of speakers in accordance with paragraph 4 above. This should include any material to which they wish to refer in order to ensure that it can be appropriately displayed.
7. Persons will address the Panel after the City Planning Officer has presented the application to the Panel and Members have obtained any necessary information in respect of that presentation and the relevant report.
8. Any Member for the Ward in which the planning application is located wishing to make representations to the Panel will address the Panel after representations by any members of the public (unless they have requested and the Chair has agreed to their representation being made earlier)
9. Persons addressing the Panel will not be given the opportunity to question Members or officers of the Panel.
10. Persons addressing the Panel are expected to be available to answer questions in

order to clarify points which they have made to the Panel.

11. Panel cases will be taken in the order in which they are set out in the agenda unless it is felt expedient by the Chairman to do otherwise (e.g. if there were a high level of public interest in a particular case).
12. The Panel will not accept additional written representations in lieu of a person addressing the Panel unless they convey new points that had not previously been made.



## **Appendix C – Template Handling Note**

**[DESCRIPTION OF PROPOSAL] (“the Proposal”**

**CITY OF LONDON CORPORATION**

**TEMPLATE FOR REGULATION 64(2) HANDLING NOT**

### **1. Background**

- 1.1** Regulation 64(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”) requires that where a proposal for EIA development is brought forward by the City of London Corporation and the City of London Corporation will be responsible for determining that application for planning permission, they must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under the EIA Regulations, between the persons bringing forward the proposal for development and the persons responsible for determining that proposal.
- 1.2** This note sets out the arrangements which must be adopted to ensure compliance with the EIA Regulations
- 1.3** This note applies to applications for planning permission for development which is not EIA development made by the City of London Corporation as applicant to the City of London Corporation as local planning authority

### **2. Overarching Principles to be observed in handling the Proposal**

- 2.1** The Local Planning Authority must assess the Proposal in the same way as if it was submitted by any other applicant. It will be assessed and determined solely on the material planning considerations, disregarding any financial or other benefits to the City Corporation as applicant. If more information is required it will be sought from the applicant notwithstanding potential delay or cost consequences for the applicant.
- 2.2** The Local Planning Authority function will be undertaken wholly independently of the applicant/promoter functions, acting impartially and objectively
- 2.3** There will be no discussion or communication about the Proposal between the officers and Members carrying out the Local Planning Authority function in respect of the Proposal and the officers and Members carrying out the Applicant/Promoter functions in respect of the Proposal, other than formal communications appropriate to the application process such as would occur with any other Applicant.
- 2.4** No officer or member carrying out the Applicant/Promoter function in relation to the Proposal may give any instructions to or put any pressure whether direct or indirect upon any person acting or assisting in the discharge of the Local Planning Authority function.

### **3. Arrangements for handling the Proposal**

#### **3.1 Local Planning Authority functions**

Gwyn Richards (Interim Development Director and Chief Planning Officer) is the lead officer responsible for undertaking the local planning authority functions [under the EIA Regulations] arising in respect of the determination of the planning application including pre-application advice

He is (or has been) assisted by the following officer team:

- Planning
- Transportation
- Highways
- Legal
- Communications

The Local Planning Authority officer team will report to the Planning & Transportation Committee [or any Sub-committee appointed by it for the purpose], which will be responsible for making the decision on the planning application. No Member of a Committee with responsibility for promoting the Proposal should sit on Planning & Transportation Committee [nor be a Member of any sub-committee] when it is considering the planning application for the Proposal. The Members of the Planning & Transportation Committee who are to sit on that Committee or any sub-committee when determining the planning application shall be identified as soon as is practicable following receipt of the planning application.

### **3.2 Applicant/Promoter (non-Local Planning Authority) functions**

The officers, consultants and Committees who are (or have been) involved in the promotion of the Proposal are as follows:

[Specify team]

The following officer/s is/are identified as the agent for the planning application:

### **3.3 Implementation of Arrangements**

3.3.1 The persons identified at 3.1 and 3.2 will be reviewed regularly and updated to reflect any changes in responsibilities or roles, and any such changes shall be noted on an updated Handling Note

3.3.2 The officers identified at paragraph 3.1 and any Members of the Panel identified as those who will sit on the Panel to determine the planning application shall not engage in any discussion or communication in relation to the planning application with other officers or Members save that the officers identified in paragraph 3.1 shall be entitled to communicate with the officer/s identified in paragraph 3.2 as the agent for the planning application and only in the same way as those officers identified in paragraph 3.1 would communicate with any person acting as an agent in relation to planning applications in general and save when officers identified in paragraph 3.1 are conducting formal consultation on the planning application.

3.3.3 Persons identified at 3.2 must not engage in any discussion or communication in relation to the planning application with the persons identified in paragraph 3.1, save that person/s identified as the agent in paragraph 3.2 may communicate with the



officers identified in paragraph 3.1 in the same way and on the same basis as the agent in relation to planning applications in general.

3.3.4 The Handling Arrangements will be published and will be included within the publicly available planning application documents both in hard copy and electronically

3.3.5 The Handling Arrangements will be circulated to all persons identified at 3.1 and 3.2, and recirculated to them following any amendments

3.3.6 Any communications, documents or other information generated by those exercising the Local Planning Authority function which would not normally be shared with an Applicant should be marked 'CONFIDENTIAL: LOCAL PLANNING AUTHORITY ONLY', and should not be stored on file space accessible to any person other than those exercising the Local Planning Authority function (unless this is authorised by the Planning and Development Director and he has satisfied himself that, where applicable, such disclosure would be compliant with the EIA Regulations)