



CITY OF LONDON CORPORATION

PLANNING PROTOCOL

PART 1 **INTRODUCTION**

1. (1) This Protocol relates to the way in which the Planning & Transportation Committee exercises its 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 in the discharge of its statutory planning functions.
- (2) The Protocol aims to,
 - give effect to the recommendation of the Committee on Standards in Public Life that local authorities should have well-documented practices and procedures designed to avoid grounds for allegations of impropriety
 - ensure that the Committee acts 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.
- (3) The Protocol takes account of the requirements of the Members' and Officers' Code of Conduct.
- (4) In this Protocol, words importing the masculine gender include the feminine.

PART 2 **PLANNING & TRANSPORTATION COMMITTEE**

2. **The Committee**
 - (1) The Planning & Transportation Committee is a Ward Committee comprising Common Councilmen for each Ward of the City together with four Aldermen.
 - (2) The Committee on Standards in Public Life recommended that members of planning committees should receive appropriate training. Appointment to the Planning and Transportation Committee effectively creates a requirement for Members to undertake such training, both on appointment and periodically thereafter. (*The Town Clerk will draw this to the attention of the Deputies of the several Wards when seeking nominations from them*). The form of the training is to be agreed by the Committee and Members are advised not to accept nomination for appointment on the Committee unless they are prepared to accept this responsibility. Members should also familiarise themselves with this Protocol.

3. General Principle

Members of the Planning and Transportation Committee must consider all planning applications objectively on the basis of evidence presented to them. In any contact with applicants or objectors they should normally seek to avoid giving a firm view on a particular application. If they choose to do so before the Committee considers the application then they cannot vote on it.

PART 3 PRE-COMMITTEE CONSIDERATION

4. Contact with Applicants and/or Objectors

(1) Discussions between and lobbying 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, lobbying can lead to the impartiality and integrity of Members being called into question.

(2) To avoid such problems, discussions should take place within the following guidelines :-

- Members, and Members of the Planning and Transportation Committee in particular, should take care not to express opinions that suggest or indicate they have made up their mind on an issue before they have heard and/or read all the evidence.
- At the outset it should be made clear that discussions will not bind the Committee to make a particular decision and that any views expressed are personal and provisional.
- Members should confine themselves to factual matters and can refer the person(s) who they are meeting to the City Planning Officer, particularly if they wish to have their opinions included in the Committee report. (Members should not, of course, attempt to pressurise officers to bring forward particular recommendations).
- 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 Committee meeting. The Committee report may contain issues previously unknown to Members and other aspects, not previously evident, may arise during the Committee's deliberations.
- Where a meeting between a Member and an applicant or objector can be foreseen, the Member can, at their discretion, ask for an Officer also to attend (and for a follow-up letter of the meeting to be sent to record the matter). Also, if there is a contentious telephone discussion, it may be helpful to make a note afterwards of what was said.
- Officers may give an indication of the recommendation that is likely to be made to the Committee, particularly in the light of the provisions of the Unitary Development Plan, but it must be made clear that this will not bind the Committee to make a particular decision

(3) Members should be very cautious about accepting gifts and hospitality from planning applicants or objectors and notify any acceptance in accordance with the Members' Code of Conduct. Unless there are special reasons, the presumption should be that gifts are refused.

5. Ward Members

(1) A Member of the Planning and Transportation Committee who represents a Ward affected by an application may be placed in a difficult position if the matter is controversial. If the Member responds to lobbying by speaking publicly or campaigning in support of a particular outcome it will be difficult for that Member to argue later, when the Committee takes a decision, that he has carefully weighed all the evidence and arguments presented.

(2) A distinction can be drawn between pre-disposition and pre-determination. A Member could, both understandably and 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. If, however, he 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. Such 'pre-determination' can be a basis for judicial proceedings against planning decisions (see *Richardson v. North Yorkshire County Council*).

(3) Although not amounting to a personal interest, a Member who has a pre-determined attitude as described in paragraph 5(2) should make an open declaration at the Committee and not vote. Such a scenario could be viewed as a restriction on the Member's duty to represent his electorate and, therefore, it underlines the importance of the advice set out in paragraph 4(4) that Members should await the presentation of all the evidence at Committee before expressing a set view and making a final decision.

(4) Notwithstanding the above, it should be possible for a Member of the Committee to assist members of the public in dealing with the planning process and explaining how to make their views known.

(5) The City of London Corporation's Standing Orders permit Members who are not Members of the Committee to attend meetings of the Planning & Transportation Committee and, with the permission of the Chairman, to speak but not vote.

6. Site Visits

(1) In terms of site locations, 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.

- (2) Site visits will be undertaken if Members 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 Committee meeting.
- (3) 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 Committee meeting by the Chairman.
- (4) Site visits will consist of an inspection by Members 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 or agent is present, Members should avoid making any statements that could prejudice consideration of the application.
- (5) A site visit is not a formally convened meeting of the Committee and, therefore, decisions cannot be taken. A report on the visit should be made to the following meeting of the Committee.

PART 4 **COMMITTEE MEETINGS**

7. Interests

- (1) Responsibility for declaring interests lies with individual Members of the Committee. Personal interests in any application should be declared in accordance with Standing Orders and the Code of Conduct. A Member with a prejudicial interest should also make a declaration and withdraw from the meeting and not vote [but may make representations from the public gallery in accordance with paragraph 7(3) below before withdrawing from the room].
- (2) The test for determining a prejudicial interest is whether a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice a Member's judgement of the public interest.
- (3) A Member who acts as an agent for anyone pursuing a planning proposal within the City should play no part in the decision-making process for that proposal. Members with a personal and prejudicial interest can, however, address the Committee in accordance with the Code of Conduct.
- (4) A Member of the Committee, or other Member attending the Committee, in the situation described in paragraph 7(3), should declare his position to the Monitoring Officer and to the City Planning Officer and, if it would otherwise be a delegated decision, ask for the planning application to be considered by the Committee. At the beginning of the Committee meeting the Member should formally declare his personal and prejudicial interest and may address the Committee from the public lectern before

withdrawing from the meeting in accordance with the Code of Conduct and the procedure set out in Appendix C.

- (5) A Member of the Planning & Transportation Committee who is, at the same time, a Member of a City of London 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.
- (6) A Member of the Planning & Transportation Committee who has a 'public service interest' (ie. who is a member of another authority, charity or lobbying body) would be regarded as having a prejudicial interest where they attended to make representations and the matter related to the determination of any approval, consent or permission in relation to the body or to the financial affairs of the body. However, the Member may attend a committee meeting considering the business in which he has a prejudicial 'public service interest' solely for the purpose of making representations, giving evidence or answering questions relating to that business provided members of the public are also allowed to attend the meeting for the same purpose. After the Member has made his representations in accordance with the procedure set out in Appendix C and given his evidence or answered the questions relating to that business, he must withdraw from the room where the meeting is being held.

8. Members' Presence throughout Consideration of an Item

- (1) Committee 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.
- (2) The Chairman, in consultation with the Town Clerk and Comptroller and City Solicitor, would have the final judgement on whether a Member should vote if it was debatable whether that Member arrived in sufficient time to do so.

9. Contact with Applicants

- (1) It is for individual Members of the Committee to decide if contact with an applicant should be disclosed in any particular case.
- (2) Where a Member of the Committee has had significant contact with an applicant, he should make this known to the Committee. Significant contact would not normally include contact with ward constituents on minor applications, unless this constituted a substantial lobbying exercise. It would include meetings, with or without Officers present, with applicants or agents other than in a formal committee or Court setting (see paragraph 9 (4)). As long as Members in this position have restricted themselves to the guidelines set out in Part 3 and have not openly declared their voting intentions, they may participate in the debate and vote.

- (3) If a Member has compromised his position by expressing views that indicate that he has pre-determined the issue before hearing all the evidence and arguments, he should not vote.
- (4) Occasionally, briefings on major applications are arranged by applicants for all Members of the Common Council. 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.

10. Development by the City of London Corporation

Particular care must be taken with planning applications for the development of land or buildings owned by the City of London Corporation so as to demonstrate that the applications are not subject to preferential treatment; such applications must be subject to the same rigorous examination as other applications. If the nature of a Member's participation in a meeting of another committee means that his consideration of an item before the Planning & Transportation Committee is not impartial (for example, because that other committee is the applicant for planning permission or that other committee has already reached a decision about the merits of a planning application under consideration), then he should not participate in the decision of the Planning & Transportation Committee.

11. Reports to the Planning & Transportation Committee

- (1) All planning applications considered by the Planning & Transportation Committee shall be the subject of reports by the City Planning Officer.
- (2) Such reports will include:-
 - the substance of the objections and views expressed by respondents to the consultations
 - relevant Government advice, London Plan policies, Unitary Development Plan policies and supplementary planning guidance, site or related history, and any other material considerations including technical aspects that are material planning considerations on which other City of London 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 is explained in the report)
 - reasons in the case of a recommendation for an approval or a refusal, and any necessary conditions (and reasons therefor) in the case of a recommendation for approval

12. Decisions Contrary to Officer Advice

- (1) When determining an application, the Committee is entitled to attach weight to the various relevant planning criteria. This can lead to a decision contrary to the recommendation(s) of the City Planning Officer.

(2) In these circumstances,

- the City Planning Officer, or other appropriate officer, must be given an opportunity to explain the implications of a decision contrary to the recommendation(s)
- the reasons for refusal or approval, (and for conditions on any approval), must be set out in the minutes of the meeting. It is, therefore, essential that the reasons for a refusal or approval, and for the conditions to be imposed on a permission, are clear in the minds of Members. It may be possible for the Committee to be specific about their reasons and to record them in detail when the application is first considered. However, it is more likely that it will be necessary to defer an application for a further report to enable detailed reasons or conditions to be framed. For this reason, the Committee has agreed guidelines for handling these cases, which are set out at Appendix A to this Code
- the minutes must be clear when an application is deferred under the guidelines, as opposed to a deferment for any other reason

13. Public Participation

- (1) Applicants, agents and objectors have the right to address the Planning & Transportation Committee in accordance with the approved Procedure for Public Speaking set out at Appendix B.
- (2) The operation of the Procedure will be reviewed regularly to ensure that it continues to operate in an effective way.
- (3) The Committee will take account of the views expressed when reaching a decision.

GUIDELINES

PLANNING APPLICATIONS/APPEALS

**DETERMINATIONS CONTRARY TO RECOMMENDATIONS OF THE
CITY PLANNING OFFICER**

1. These guidelines apply when a majority of Members wish to determine a planning application contrary to the City Planning Officer's recommendation.
2. The City of London Corporation is required to process planning applications without undue delay. It will, therefore, be necessary to establish that there is a real prospect of the recommendation not being accepted before deferring the application.
3. If the Committee, having considered the report and advice of the officers, are satisfied that they have sufficient information to frame substantive and sustainable reasons for refusal or approval, and adequate conditions and reasons therefor in the case of approval, then the application may be determined at the same meeting.
4. If sufficient information is not available to the Committee to determine the application at the meeting, it is open to them to defer the application to the next meeting.
5. If the application is deferred, the officers will then consider the application in the light of the views expressed by Members and draft possible reasons for refusal or approval, (and conditions and reasons therefor in the case of approval), to reflect Members' views, and report further on the circumstances to the next or next practicable meeting of the Committee.
6. The original report of the City Planning Officer shall be re-submitted to the subsequent meeting, accompanied by a further report setting out reasons for refusal/approval (and conditions and reasons therefor in the case of approval) that reflect the Members' views at the previous meeting. Any further information that has become available about the application or the intentions of the applicant shall also be submitted.
7. Before any presentation or debate, officers will explain the circumstances under which the application is being re-considered and the options available to the Committee.
8. The Committee shall take account of all relevant planning considerations in reaching its decision on the re-presented application. Although the views of Members at the previous meeting may have been clear, those views cannot restrict the options available to the Committee in reaching a decision.

9. Opportunity will be given at the second meeting for public speaking as for a fresh application.
10. Where planning permission is refused and the matter goes to appeal, the normal convention will be that officers of the Planning & Transportation Department (and other Departments in appropriate cases) will act as expert professional witnesses to present the City of London Corporation's case.
11. When appropriate, the Planning & Transportation Committee should identify a Member or Members to support the case at appeal. This is of importance in stressing to a Planning Inspector the strength of Members' views and the reasoning behind them. However, Members can only speak at appeals in a non-technical capacity. In exceptional circumstances, Members could be asked to appear as the only witness at appeal (eg. where the Members' decision is based solely on aesthetic or nuisance considerations) although, once again, Members could only speak in a non-technical capacity and they would be supported by the appropriate officers.
12. At the earliest possible stage after an appeal is lodged and a public inquiry is requested by the Appellant, the following issues should be determined:-
 - a) whether it would be appropriate to engage external Counsel to advocate the City of London Corporation's case;
 - b) which officers should appear at the inquiry to support the City of London Corporation's case;
 - c) whether external consultants should be used to give evidence on behalf of the City of London Corporation.
13. Authority for determining the issues referred to in paragraph 12 above rests with the City Planning Officer and the Comptroller & City Solicitor and other appropriate service heads. In the absence of agreement, the matter would be referred to the Town Clerk to reach agreement in consultation with the Chairman of the Planning & Transportation Committee.

RULES GOVERNING PUBLIC SPEAKING
AT MEETINGS OF THE
PLANNING & TRANSPORTATION COMMITTEE

1. In order to speak you must have submitted written representations on the relevant planning application at least 14 days before the committee 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 5 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. Anyone wishing to speak at Committee 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 3. and to allow time for such organisation.
5. All parties on registering a request to address the Committee must submit a written statement of their case 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.
6. Persons will address the Committee after the City Planning Officer has presented the application to the Committee and Members have obtained any necessary information in respect of that presentation and the relevant Committee report.
7. Persons addressing the Committee will not be given the opportunity to question Members or officers of the Committee.
8. Persons addressing the Committee are expected to be available to answer questions in order to clarify points which they have made to Committee.
9. Committee 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 (eg. if there were a high level of public interest in a particular case).

10. The Committee will not accept additional written representations in lieu of a person addressing the Committee unless they convey new points that had not been included in the original representation, which will already have been taken into account.
11. If there is any dispute as to whether it is appropriate for someone to address the Committee, the final decision rests with the Chairman or Deputy Chairman.
12. Representation on matters other than planning applications will be at the discretion of the Chairman.

APPENDIX C

RULES GOVERNING SPEAKING AT MEETINGS OF THE PLANNING & TRANSPORTATION COMMITTEE BY MEMBERS WITH A PERSONAL & PREJUDICIAL INTEREST

1. In accordance with the Code of Conduct, any Member who has a personal and prejudicial interest ("the Member") is entitled to make representations to the Planning and Transportation Committee before withdrawing.
2. A Member in this position should declare this interest at the beginning of the meeting. He should also inform the Town Clerk before the meeting as soon as he becomes aware of this interest and indicate whether he/she intends to speak on the item at the Committee.
3. Ideally, in keeping in the spirit of the Public Speaking Procedure that allows Members in this situation to address this Committee, the Member will submit to the Town Clerk as soon as possible a written statement of his case in order that any factual or new points can be investigated prior to the meeting, and so that it can be kept for the record. This statement should include any material to which he wishes to refer in order to ensure that it can be appropriately displayed.
4. When the Committee reaches the relevant item in the meeting, the Member should move to the public gallery and remain there during the City Planning Officer's introduction.
5. The Member will then be the first person called upon to address the Committee, which the Member will do from the lectern used by the public speakers.
6. The Member can address the Committee for no longer than three minutes, monitored by the Town Clerk.
7. The Member will not be given the opportunity to question other Members or officers of the Committee on this item.
8. As soon as he has addressed the Committee, the Member will withdraw from the room for the duration of the consideration of that item.
9. If there is any dispute as to whether it is appropriate for someone to address the Committee, the final decision rests with the Chairman or Deputy Chairman, in consultation with the Town Clerk and Comptroller & City Solicitor.