

Date: 16 December 2020

Report REVIEW OF EFFICIENCY AND EFFECTIVENESS OF PLANNING COMMITTEE ARRANGEMENTS

Purpose of report

1. To report the outcomes of the Member-led review of the efficiency and effectiveness of the Planning Committee's arrangements.

RECOMMENDATION

2. That Members adopt the recommendations set out in **Appendix 1** to improve the efficiency and effectiveness of the operation of the Planning Committee.

Background

3. At the Authority meeting in September, Members agreed to change the frequency of Planning Committee meetings (from monthly to 6-weekly). In doing so, Members also asked that a small-working group be established to explore other potential improvements to the operation of the Planning Committee. The terms of reference for the review were

In light of the Authority's recent decision to change the frequency of Planning Committee meetings, to consider and make recommendations to the Authority for other improvements to the efficiency and effectiveness of the operation of the Planning Committee as part of the Authority's Development Management service.

4. The working group was established under the chairmanship of the Member Champion for Development Management, together with the Chair and Deputy Chair of the Planning Committee; and Mr Parsons (who had advocated for the review). The Members were supported by Officers from the Authority, and further advised by the Director of Planning at the North York Moors National Park Authority. The group met three times during October and November.

Consideration

5. The review was intended to be relatively light touch. At the first meeting, the working group identified four aspects of the current Committee arrangements that Members felt warranted consideration in light of the move to 6-weekly meetings:
 - a. The 'Reference back' procedure

- b. Committee Site visits
 - c. Public speaking at Committee meetings
 - d. Delegation scheme
6. The detailed consideration and recommendations on each of these aspects of procedure are set out in **Appendix 1**.
 7. Since aspects of the operation of the Planning Committee were last considered (2018), the Planning Advisory Service (PAS) has issued an updated version of its national guidance ("[Probity in Planning](#)"). This has been taken into account when reviewing each of the elements described above.
 8. The group was also mindful that Covid 19, and the changes to procedures that it has necessitated, may be with us for some time. Any recommendations, therefore, need to be applicable now and in the future.
 9. Overall, the group's view was that the Committee is generally operating efficiently and effectively. The bulk of the proposals are aimed at refining, rather than radically overhauling, the procedures, and at improving the way that the Committee's procedures and decisions are communicated.
 10. The one significant change is in relation to Committee site visits. Whilst Members were very mindful of the importance of transparency and accountability, they were equally of the view that – in light of the PAS guidance - site visits are not the appropriate vehicle for achieving that because they can easily create a perception of undue influence. The recent site visit to Linton Camp had demonstrated a more fair and equitable approach, and enabled Members to focus solely on the issues that the site visit sought to address.
 11. Subject to Members views on the proposals, the changes would be incorporated into a revised version of the Authority's 'Planning – Good Practice Guide' (**Appendix 2**) which gives further detail of how the proposals would work in practice.

Conclusion

12. The Planning Committee is functioning well at the moment but the Authority's culture of continuous improvement applies to all our functions. The recommended changes on **Appendix 1** will help to ensure that improvement.

Gary Smith
Director of Conservation and Community

1 December 2020

CONSIDERATION AND RECOMMENDATIONS OF THE WORKING GROUP

Reference back

13. The Authority's 'reference back' procedure was introduced following a report by the Audit Commission in 2001, which identified "serious concerns about some aspects of the [Committee] process". The procedure – which is set out in the Authority's 'Planning - Good Practice Guide' — creates a presumption that any application that the Committee determines contrary to the officer recommendation will be deferred until the next Committee meeting. This is to allow officers to provide an additional report to Members giving advice concerning the reasons put forward for setting aside policy and offering appropriate conditions/reasons should Members decide to confirm their initial decision.
14. In practice, the procedure is not applied in every case because the Head of Development Management can determine that the issues raised by the decision do not necessitate it.
15. In the last 2 years there have been 8 cases where the Committee made a decision against the original officer recommendation. Of these, 6 led to the reference back procedure being invoked. In every case, the reference back led to Members' original decision being confirmed.
16. The [PAS Probity in Planning guidance](#) is clear that Planning Committees should consider deferring any application where they are minded to make a decision against the recommendation and there is concern about the validity of the reasons for doing so. This is so the reasons can be tested and discussed, and to try to ensure that the decision does not make the Authority vulnerable to costly legal challenge. Members will be aware from the recent planning training that Senior Counsel, Martin Carter, Chambers identified the Authority's reference back procedure as being good practice.
17. Clearly the move to a 6-weekly Committee cycle means that any reference back will now further extend the time taken to determine those particular applications. The process also creates additional work for officers. More pertinently, it is not well understood by the public and is easily misrepresented as 'the officers' trying to stop Members from making decisions they are entitled to make.
18. The Working Group weighed up the *pros* and *cons* of the Authority's current approach. The group noted that other authorities do not have 'reference back'. On the other hand, some authorities that have area planning committees operate a system where decisions against recommendation are referred on to a main Planning Committee. The group was also mindful of the financial and reputational penalties that can result from decisions that are made without valid reasons. It was noted that the Authority has had no successful legal challenges against its decisions over the past 10 years and a good record of appeal outcomes. Any reduction in the work associated with 'reference back' cases would need to be balanced against the potential for increased work and costs from dealing with appeals and legal challenges.
19. On balance, the group concluded that they wished to retain the security that the current system provides but try to further reduce the number of cases where such

deferral is necessary, and to be much more explicit that the purpose of such deferrals is to test and, where possible, strengthen the reasons on which the decision was based. It is therefore recommended that:

- i. The current ‘reference back’ procedure is replaced by a similarly formal system of deferral but which:**
 - **would only apply in cases where there is substantial doubt about the validity or soundness of the reasons given for the decision; and,**
 - **would be solely for the purpose of testing those reasons.**
- ii. Any time an application is deferred in this way, a letter should be sent to the applicant explaining why the application has been deferred and what will happen next.**
- iii. Analysis of the outcomes from the deferral system should be included each year as part of the planning training for Members and the annual training event for Parish Councils (see recommendation viii).**

Committee site visits

20. Committee site visits are a valuable part of the decision-making process but they should only be used where “the benefit is clear and substantial”. The PAS guidance identifies 3 situations in which a site visit could be appropriate:
 - a) the impact of the proposed development is difficult to visualise from the plans and any supporting material;
 - b) the comments of the applicant and objectors cannot be expressed adequately in writing;
 - c) the proposal is particularly contentious.
21. Analysis for the last 3 years shows that the Committee has undertaken 10 site visits (and in each case the application was determined in line with policy). This level does not suggest that site visits are being used unnecessarily.
22. 7 of the 10 site visits had been agreed during a Committee meeting. The group’s view was that site visits are most efficient, and bring least delay, when arranged *before* committee meetings (notwithstanding the fact that there will still be occasions where that is not possible). It is recommended, therefore, that:
 - iv. The Head of Development Management should liaise regularly with the Chair and Deputy Chair of the Committee to identify potential site visits in advance of future Committee meetings.**
23. In relation to the *operation* of site visits, the PAS guidance stresses they should be used solely for observing the site and gaining a better understanding of the issues. They should not to be used as lobbying opportunities for objectors or supporters. The

guidance concludes that visits made by committee members, with officer assistance, are normally the most fair and equitable approach.

24. The Authority's current arrangements – which allow the attendance of a wide range of parties and members of the public – can make site visits very difficult to manage. Whilst they may give an impression of openness in the decision-making process, the group believes the number of attendees can create a perception of undue influence (e.g. where objectors greatly outnumber the applicant, or the applicant is especially outspoken) and, at a more practical level, make it difficult to focus on observing the site. Other Authorities operate a more limited attendance (e.g. just the Ward Councillor and/or a Parish Councillor), whilst others – like South Lakeland District Council - limit attendance solely to Members and officers.
25. The group's view was that the restrictions on attendance necessitated by Covid at the recent site visit to Linton Camp clearly demonstrated that such visits would be both more effective – *and* avoid potential perceptions of undue influence – if attendance is limited to Members and officers. The group, therefore, recommends that:
- v. *The Authority's guidance on site visits should be amended to reflect the latest PAS guidance, including that attendance should be limited to Members and officers only.***
 - vi. *A full note of the site visit proceedings will be published on the agenda of the relevant Committee meeting – so all parties know the issues that were discussed.***

Public speaking at Committee meetings

26. The strong feeling of the working group was that the opportunity for public speaking at Committee is a key element in making sure that Members have a full understanding of the development before making a decision, and in ensuring that the process is *seen* to be open and fair. Therefore, the opportunities for the applicant, objectors, and the relevant Parish Council or Meeting to speak should all be retained.
27. It was noted, however, that under the revised arrangements for the operation of the Committee during Covid-19, the time for each speaker had been reduced from 5 minutes to 3 minutes with no adverse impact on the effectiveness of the contributions. Given the increase in the number of applications that will fall to be considered at each Committee meeting as a result of moving to 6-weekly meetings, the group therefore recommends that:
- vii. *The current arrangements for the applicant, objectors, and the relevant Parish Council or Meeting to each speak for 3 minutes at Committee meetings should be made permanent, as should the arrangements to allow speakers to appear via video-conference to make it easier for people to attend.***

Delegation Scheme

28. The delegation scheme is the mechanism that determines how many applications fall to be determined by the Planning Committee and how many are dealt with by officers. Under the current delegation scheme, applications only come to Committee where they meet one of three main criteria:
- a) The application is 'called-in' by a Member of the Committee as "a matter of public interest"; or
 - b) The Parish Council disagrees with the officer recommendation; or,
 - c) The Head of Development management believes it is in the best interests of the Authority for the application to be determined by Members.
29. Over the last 3 years, some 157 applications have been determined by the Committee. With 6-weekly meetings, that would equate to between 6-7 applications per meeting. The key issue is to ensure that the Committee is focusing its time on the most significant and/or contentious applications, where decision-making 'in public' is critical.
30. The main sources of applications coming to Committee are the Parish Councils (67) and officers (70), with Member call-in accounting for 20. The group noted that the number referred by officers was increased significantly (+30) by the period when it was agreed that all barn conversion applications should come to Committee. The group supported retaining both Member call-in and the current flexibility for the Head of Development Management to refer applications to Committee as necessary.
31. The group also strongly supported the retention of the mechanism whereby potential decisions that the Parish Council disagrees with are brought to Committee for determination. Whilst many of these applications are for small-scale development that would not meet the wider 'public interest test', the mechanism is seen as an essential part of demonstrating that the process is open and fair, and that the views of Parish Councils/Meetings have been taken into account (even if that does not always mean that the final decision is what the Parish might have wanted). However, there was a feeling from the Members that there were a small number of applications coming to Committee via this route that were *extremely* minor.
32. Further analysis of the applications revealed that of the 67 such applications:
- a. 18 were for 2 or more dwellings or new business developments;
 - b. 20 were for 1 new dwelling, barn conversion or farm building;
 - c. 9 were for other development or change of use; and
 - d. 20 were for alterations to existing dwellings, including a new playhouse, new windows, and a garden store.
33. The group considered various options for delegating the Head of Development Management to judge whether an application was sufficiently significant or contentious to merit consideration by the Committee but concluded that this would be an invidious approach. Instead, the group concluded that a clearer and more straightforward option would be to exclude minor 'householder' development (i.e. alterations to existing dwellings or ancillary buildings within the existing curtilage of the dwelling). In

the unlikely event that such a development ever did meet the wider 'public interest' test, it could still be picked up through the two 'fallbacks' in the system (Member call-in and officer referral). The group, therefore, recommends that:

viii. The scheme of delegation be amended to generally exclude from consideration by Committee any application for minor 'householder development' that arises from an objection by a Parish Council or Meeting.

34. Given the importance that Members attach to the participation of Parish Councils and Meetings in the planning process, it is also recommended that:

ix. The Authority should introduce an annual training event with Parish Councils and Meetings to communicate any changes in approach; improve awareness of the policies/procedures; and, promote understanding of what constitutes a material planning consideration.

PROPOSED REVISED EXTRACTS FROM YDNPA'S 'PLANNING - GOOD PRACTICE GUIDE'

7. Site Visits

Site visits can be a valuable part of the planning process. However, holding an official site visit incurs cost to the Authority and delays determination of the planning application. It is also important that the public can understand why certain applications require a site visit and others do not.

Site visits should only be used where the benefit is clear and substantial.

The Code of Practice in the **annex** sets out the procedure for deciding whether a site visit is required and, if so, the conduct of the site visit.

All Members of the Planning Committee should endeavour to attend site visits organised by the Authority. If you do not attend a site visit you must consider whether you have sufficient knowledge and understanding of the proposals to take part in the debate and vote at the following Planning Committee meeting.

You should not enter a site that is subject to a planning application other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias .

You have no individual right to enter private property. You may view a site from a public highway at any time but should not become drawn into discussions on the merits of any proposal.

10. Decision Making

(2) Decision Making by Members at Planning Committee

In making decisions on planning applications, you must determine the application in accordance with the policies in your Development Plan unless material considerations indicate otherwise. Your Development Plan policies – which have been adopted by the Authority after wide public consultation and formal examination by a Planning Inspector - should not be set aside without sound planning reasons for doing so.

Members may approve, refuse or defer an application at Committee.

If you are proposing, seconding or supporting a decision, you must clearly identify sound planning reasons leading to this conclusion/decision, and identify the supporting evidence. If the proposal has been identified by officers as contrary to policies in your Development Plan, the reasons must be given prior to the vote and be recorded in the minutes. You should be aware that you may have to justify the decision by giving evidence in the event of any challenge (for example at a Public Inquiry or Judicial Review proceedings).

If you are minded to support deferring an application rather than make a final determination to approve or refuse, there must be a **clear planning reason and benefit** for doing so (e.g. to hold a necessary site visit, to properly assess information submitted at the last minute, or to have the reasons for the decision tested and discussed).

Applications should only be presented to Members when all information considered necessary by the planning officer has been sought, and negotiations to produce an acceptable scheme have

been completed. Deferring an application for officers to negotiate a further alternative is not generally a sound reason for deferment. It should only be used where Members have clear reasons for the deferment and can instruct officers as to the objective that the negotiation is intended to achieve.

(3) Decisions Contrary to Policy and/or Recommendation

The law requires that decisions are taken in accordance with your adopted Development Plan unless material considerations indicate otherwise. Officers will advise in their report which of the arguments put forward by an applicant, objector or supporter are considered capable of constituting material considerations. Often arguments of a personal kind relating to the circumstances of the applicant are put forward to support an application. Whilst these can be moving and persuasive, personal circumstances cannot outweigh other planning considerations except in the most exceptional circumstances.

Nonetheless, there will be occasions where you may be minded to vote to approve an application contrary to your policies. In this case you must identify clear and substantiated reasons that are capable of constituting material planning considerations.

The decision is ultimately the Committee's. However, it is imperative that the decision that is made identifies relevant planning considerations, and with detailed reasons set out to explain what might otherwise appear to the public to be inconsistency. The following procedure will, therefore, apply to proposed decisions contrary to officer recommendation:

a) Where a motion is put to a meeting that, if successful, would result in the determination of a planning application contrary to policy and/or the officer advice, the names of the Members voting for, against and abstaining in respect of that motion shall be recorded in the minutes.

b) Where a recorded vote shows an intention to determine an application contrary to policy or/and advice, the matter will stand deferred until the next meeting of the Committee unless there are no serious doubts about the validity of the reasons (such to be advised by the Head of Development Management).

c) Where the Head of Development Management confirms that the reasons given are considered sufficient to justify the decision:

i. the evidence or reasoning that supports the material considerations will be recorded in the minutes to ensure that the position is clear to all; and,

ii. delegated authority shall be given to the Head of Development Management to determine appropriate planning conditions and/or planning obligations.

d) Where an application has been deferred under para b) above:

i. a letter will be sent to the applicant explaining why the application has been deferred and what will happen next. Such applications will normally be considered as the first item of substantive business on the following Planning Committee agenda. If this is not possible, the applicant and Members will be informed of the delay and the reasons for it;

ii, the officers will provide further advice to the Committee as to whether it is possible to strengthen the validity and soundness of the reasons put forward , and setting out appropriate conditions/planning obligations if the proposed decision was to approve the application.

(4) 'Call-in' of Applications by Members

The Authority's Scheme of Delegation stipulates that a Member can make a written request to the Head of Development Management that a planning application be considered by the Planning Committee rather than be dealt with by officers under delegated powers. The Member must specify a **public interest reason**.

A study of the public interest test applied to the Freedom of Information Act 2000 identified a number of relevant considerations. Those that are most applicable to planning are listed below.

- (i) The issue affects a wide range of individuals or companies
- (ii) Public health and safety
- (iii) Damage to the environment
- (iv) Major policy decisions
- (v) The issue has generated public or parliamentary debate
- (vi) Accountability for assets in public ownership
- (vii) Issues that might affect the sustainability of local communities

It is apparent from the above that an issue has to have wide implications to be considered of public interest. It needs to affect a range of people or the community generally. It does not include the private interests of an individual.

ANNEX: CODE OF PRACTICE FOR NATIONAL PARK AUTHORITY SITE VISITS

Purpose of a Site Visit

Site visits can be useful in identifying important site features relevant to a proposal that may be impossible to convey in a written report or by photographs, plans and drawings. However, they can cause delay in the planning process and should only be used where there is an expectation of clear benefit.

The purpose of a site visit is a fact-finding exercise. Site visits are not a forum for debating the merits of the application. Members of the public have an opportunity to put forward their *views* through written representations and the Public Speaking Scheme at the Planning Committee. All site visits will therefore be directed only to matters of fact /physical features.

Deciding whether a Site Visit is appropriate

Site visits will only be considered necessary where:

1. the proposal is particularly contentious; or,
2. the impact or effects of the proposed development are difficult to visualise from the plans and any supporting material including slides or photographs that form a part of the Officer presentation; or,
3. the comments of the applicant and objectors cannot be expressed adequately in writing

When a site visit is proposed at a meeting of the Planning Committee, the proposer should identify which of the criteria listed above applies.

Members will first vote on whether to see the visual presentation, before considering whether a site visit is necessary. If it is decided to see the presentation, then it will be shown with a factual commentary by officers but without the merits of the application being discussed.

In all cases a formal vote will be taken on whether to hold a site visit.

The Head of Development Management, in consultation with the Chair and Deputy Chair of the Planning Committee, may also authorise a site visit where he considers one of the criteria listed above applies and to wait for the next available committee meeting would unnecessarily delay the planning application. In such instances, Members will be provided with a draft report that sets out the key issues to be considered on site and the reasons why a site visit is considered necessary.

Procedure at Site Visit.

All members of the Planning Committee (and substitute members if they are to attend the meeting itself) should endeavour to attend. One or more planning officers will attend.

Members who have a disclosable pecuniary interest in the application should not attend the site visit unless they have obtained a dispensation from the Standards Committee. Members who have a personal (but not disclosable pecuniary) interest may attend but should declare the existence and nature of their interest at the outset.

Site Visits are not formal meetings of the Planning Committee. Public *rights* of attendance do not apply. The Authority will invite all Members of the Yorkshire Dales National Park Authority (YDNPA) to the site visit:

Members of the Planning Committee must not attend the site visit to represent the views of other authorities or bodies, but this does not preclude Members drawing attention to matters of fact, or decisions of those authorities or bodies.

The site visit will start with the Chairman reminding those present of the reasons for the site visit, and the need to concentrate on relevant issues. The site visit is to observe and seek information on physical features of the site only. The merits of the proposal should not be discussed.

The Planning Officer will explain the nature of the proposal and identify the key physical features for Members to assess on site.

Members will have the opportunity to ask questions of the planning officer. Members should confine their questions to points of clarification and should refrain from any declaration or indication of their views, in support of or opposition to the application, unless they intend to take no part in subsequent Planning Committee meetings.

If any member of the public is present at any point (e.g. the owner to enable access) you should avoid entering into any discussions with them on the application

An officer will take a brief note of the site visit. This will include a list of attendees and what matters/issues were pointed out. The note will be published as part of the main Planning Committee agenda when the application is considered.