



PLANNING COMMITTEE PROTOCOL AS AMENDED

Size of the Planning Committee

- 1.1 Fermanagh and Omagh District Council has resolved that its Planning Committee will have thirteen members. As previously recommended to the Committee, and in accordance with the Department's guidance, the quorum for the Committee will be 50% of the membership, that is, 7 members.
- 1.2 There will be no substitution of Members to the Committee; replacement of Members will be dealt with in accordance with the Council's Standing Orders.
- 1.3 The Planning Committee will be supported by relevant Council officers, as required including, but not limited to, the Chief Executive, the Director of Regeneration and Planning, the Lead Planner, Legal and Administration Officers. It is generally expected that the Lead Planner or their nominated substitute will attend all Committee meetings.
- 1.4 Environmental Health and other officers with specific technical expertise may also be required to attend Planning Committee meetings.

1.5 Frequency of Meetings

The Council has determined that the Planning Committee will meet monthly, at 2pm on the third Wednesday of each month (with the exception of August). The Committee reserves the right to schedule additional meetings as required.

1.6 Format of Planning Committee Meetings

Fermanagh and Omagh District Council will operate its Planning Committee in line with its approved Standing Orders. In doing so the following procedural arrangements will apply:

- A weekly list of all planning applications received will be sent to the full Council. This list will indicate those applications to be determined by the Planning Committee and those applications delegated to officers. Where an application is delegated to an officer, Councillors who are members of the Planning Committee can request the application be 'called in'. This should be done within 3 weeks from receipt of the application. Members of the planning Committee will also be notified where an application is delegated to officers and the recommendation is to refuse planning permission or the recommendation is to approve planning permission and an objection has been received. Members have one week from the date of notification to call in the application. An application on the weekly lists

may be called in by ONE Member of the Planning Committee. A call in must be made in writing and must be accompanied by a clear planning reason such as planning policy issues, departure from the Area Plan etc. Call in of applications is restricted to those applications with all information necessary for a recommendation to be made. The information deemed necessary to determine certain applications is set out in Appendix B.

- All Planning Committee members will be sent a detailed agenda 5 days in advance of the meeting with a list of all the applications to be presented at the meeting and the officers' recommendations. A report on each application outlining the assessment of the application and the reasons for the recommendation will be included for Committee members.
- After the agenda has been issued, there would be no circulation of additional information from any source in respect of planning applications for consideration at the Planning Committee.
- Officers will prepare an addendum to the agenda or update any reports on the day of the meeting, to inform Members of any new material considerations not previously addressed in the reports.
- It is recommended that the Chair of the Planning Committee should hold a pre-meeting with relevant officers on each application to be considered in advance of the Planning Committee meeting.
- Planning Committee meetings will be open to the public.
- With effect from November 2016, in common with all other Fermanagh and Omagh District Council and Committee meetings, the proceedings of the Planning Committee will be audio recorded.

1.7 The Planning Committee meetings will follow a standard Agenda which should allow for inclusion of the following items:

- Notice of meeting
- Apologies
- Signing of Minutes
- Presentations from External Bodies
- Declaration of interests
- Schedule of Planning Applications
- Enforcement matters
- Development Plan issues

1.8 Councillors will be required to declare an interest in any item on the agenda at the beginning of the meeting and must leave the meeting for that item. Members will then be invited to return to the meeting and notified of the Committee's decision before consideration of the next item commences.

1.9 Fermanagh and Omagh District Council has resolved that it will not usually receive presentations from external bodies at the Planning Committee. However, on those occasions where the Committee deems it appropriate to receive a presentation on matters of interest relevant to the Committee, this will be accommodated as the fourth item on the Agenda after Declaration of Interests. Such presentations, including Members' Questions and Answers, should not exceed 20 minutes.

1.10 In presenting planning applications to Committee, the following procedures for each application will apply:

- (i) Introduction by planning officer.
The Planning Officer presents the application and makes a recommendation on whether the application should be approved, approved with conditions or refused. Plans and photographs may be shown.
- (ii) Representation on behalf of applicant, agent or supporter. (10 minutes)
The total time allowed for applicant, agent or supporter to address the Committee will not be more than 10 minutes unless the Committee decide on the day of the meeting to extend the time allowed due to unusual or exceptional circumstances. Such an extension would be at the discretion of the Chair of the Planning Committee.

If more than one supporter wants to speak, the Chair may ask the supporters to appoint a spokesperson to represent their views.

No documentation should be circulated at the meeting to members by speakers.

Nor should any new information (verbal or written) which has not previously been included as part of the application be introduced or circulated.

- (iii) Members' questions to applicant, agent or supporter.
- (iv) Representations – Objectors (5 Mins)

The total time allowed for objectors to address the Committee will not be more than 5 minutes unless the Committee decide on the day of the meeting to extend the time allowed due to unusual or exceptional circumstances. Such an extension would be at the discretion of the Chair of the Planning Committee.

If an objector speaks, the applicant should be allowed to respond if they wish, even if they have not registered to speak in advance.

If more than one objector wants to speak, the Chair may ask the objectors to appoint a spokesperson to represent their views.

No documentation should be circulated at the meeting to members by speakers.

- (v) Members' questions to objectors
- (vi) Representations by Councillor(s) and other elected representatives
- (vii) (including MPs and MLAs) (5 Minutes)

The total time allowed for representations by Councillors and other elected representatives will be 5 minutes, unless the committee on the day decide to

extend the time allowed due to unusual or exceptional circumstances. Such an extension would be at the discretion of the Chair of the Planning Committee.

- (vii) Planning Officer's comments
- (viii) Members' debate including advice from officers.
- (ix) Members' decision.

The Members take a vote on whether or not to agree with the officer's recommendation. The Chair has a casting vote.

The following options are available in relation to Members' voting:

- (a) Approve the application with conditions as recommended;
- (b) Approve the application with amendments to the recommended conditions;
- (c) Approve the application contrary to Officer's recommendations;
- (d) Refuse the application for the reasons recommended;
- (e) Refuse the application with additional, fewer or amended reasons;
- (f) Refuse the application contrary to Officer's recommendations;
- (g) Defer the application with a direction for additional information or clarification; or for a Members' site visit.

Members must be present for the entire item, including the officer's introduction and update; otherwise they cannot take part in the debate or vote on that item.

Members can add conditions to a permission but cannot amend the application. Any additional conditions should be proposed and seconded before being voted on by members. Members should be aware of the legal tests conditions need to meet if challenged - they should be necessary, enforceable, reasonable and relevant to planning and the development under consideration. Planning officer comment should be invited, as necessary.

1.11 The Committee can defer consideration of an application to a subsequent meeting for further information, further negotiations or a site visit. Deferrals have an adverse effect on processing times, and the applicant can lodge an appeal after a period of time if the Council has not made a decision. Deferrals should be rare and only supported when the Committee is fully satisfied that any outstanding issue may be fully resolved as a result of the deferral. The Committee will therefore generally defer an application only once. The Member proposing a deferral must provide clear reasons as to why a deferral is necessary.

1.12 The deadline for anyone wishing to request 'Speaking Rights' to address the Planning Committee is 5.00 pm on the Monday immediately before the Committee.

In order to request speaking rights for a particular planning application, please email your request to: democratic.services@fermanaghmagh.com or telephone 0300 303 1777 extension 20203 or 20207. **These are the only contacts through which Speaking Rights may be requested.**

Those seeking speaking rights should preferably include the planning application reference number in their request. Individuals can only speak to the Committee if they are the applicant, have submitted a written response to an application or they are listed on the application as the agent / planning consultant acting on behalf of the applicant.

The Chairman may:

- (a) Suspend the public's right to speak if he/she considers it necessary to maintain order at the meeting: or
- (b) Vary the order of representations if he/she feels that it is convenient and will assist the Committee in dealing with the matter, provided that it will not cause prejudice to the parties concerned.

1.13 In lieu of speaking, Council members and members of the public may submit representations in writing for consideration by the Committee. The deadline for anyone wishing to submit such written representations is 5.00 pm on the second day prior to the meeting. Written representations will be reported to the Committee and any new material considerations not previously addressed in the reports will be highlighted and if necessary, circulated in a report on the day of the meeting.

1.14 If a Council Member is unable to attend the Committee and submits representations in writing, such representations will be read out at the Committee provided that the written representations are no more than 300 words and provided that there is sufficient time within the 5 minutes allocated for council and other elected member representations.

1.15 **Decision Contrary to Officer Recommendations**

Many planning decisions are finely balanced and the Planning Committee will come to its own conclusions, following debate and taking into account all material planning considerations. This Committee decision may differ from the recommendation of the officer. Where the Committee takes a different decision, it must be backed by sound, clear and logical planning reasons, linked to planning policy. The Lead Planner and Planning Officers will have the opportunity to explain the implications of the Planning Committee's decision. Consideration will need to be given to whether such decisions will be capable of being defended on appeal to the Planning Appeals Commission with the potential for award of costs against the Council. The reasons for any decision which are made contrary to the Planning Officer's recommendation must be formally recorded in detail in the minutes and a copy placed on the planning application file / electronic record.

1.16 Where Members reject a planning application that officers have advised them to accept, the Chairman should seek the views of officers

(including the Council's legal advisers) before going to the vote in terms of reasons for refusal.

In such circumstances, officers should endeavour to summarise what are considered to be the main reasons for refusal referred to by Members during the debate and advise what would be reasonable and unreasonable reasons for refusal.

If officers consider that the suggested planning refusal reasons are reasonable and capable of being defended on appeal, Members should vote on the reasons for refusal. If in the view of officers, the reasons for refusal are either in whole or in part not capable of being defended, then Members should give consideration to deferring determination of the planning application until the next Planning Committee and ask for a further report (and / or site visit) to ensure it has all the relevant information it considers necessary to inform its decision.

Advice and assistance should be sought from the Council's legal advisers, as necessary.

- 1.17 Deferrals of decision making can have significant impacts on decision times. Deferral of a decision to a later committee meeting has generally been used as a period of reflection in a situation where the committee is minded to refuse a proposal against an officer recommendation to approve. It allows the officer the time to draw up refusal reasons in line with the Committee's debate and decision for agreement at a further meeting. Deferrals should be an exception.
- 1.18 If the Planning Committee decides to approve an application against an officer's recommendation to refuse, the Planning Committee should be aware that, while there is no right of third party appeal, there is the possibility that the decision could be subject to judicial review. In such circumstances a recorded vote will be taken and the Planning Committee will decide, from amongst those members supporting the proposal who will defend the Committee's decision in court.
- 1.19 **Pre-Determination Hearings**
The Planning Committee has a mandatory requirement to hold Pre-Determination Hearings for those major applications which have been referred to the Department for call-in consideration but have been returned to the Council for determination. The Council's planning committee will therefore have to hold a hearing prior to the application being determined. In addition, the Council may also hold pre-determination hearings, at its own discretion, where it considers it necessary, to take on board local community views, as well as those in support of the development.
- 1.20 The intention is to make the application process for major applications more inclusive and transparent by giving applicants and those who have submitted representations, the opportunity to be heard by Council before it takes a decision.

- 1.21 It will be a matter for the Planning Committee to judge when a Pre-Determination Hearing is appropriate, taking account of the relevance of the objections in planning terms, the complexity of the application and level of pre-application community consultation.
- 1.22 When holding a Pre Determination Hearing the procedures will be the same as those for normal Planning Committee meetings. The Planning Officer will produce a report detailing the processing of the application to date and the planning issues to be considered. The number of individuals to speak on either side, time available etc will be agreed prior to the hearing.

If the Planning Committee decides to hold the hearing on the same day as it wishes to determine the application, the Planning Officer's report should also contain a recommendation.

1.23 **Site Visits**

It is recognised that, on occasions, Members of the Planning Committee may need or wish to visit a site to help them make a decision on a planning application. For example, the proposal may be difficult to visualise or the application may be particularly contentious. The purpose of a site visit is a fact finding exercise during which no debate about the merits of the case should arise.

- 1.24 Site visits should be an exception as they are time consuming and expensive. If required, they should be identified by planning officers in consultation with the Chairman prior to the planning committee meeting at which the application is scheduled to be determined. Site visits should only be carried out where there are clear benefits.
- 1.25 Where a site visit has been agreed, the Planning Committee clerk should contact the applicant/agent to arrange access to the site. Invitations will be limited to Members of the planning committee and Council Planning Officers. Site visits are not an opportunity to lobby Councillors or be used to seek to influence the outcome of a proposal prior to the planning Committee Meeting.
- 1.26 Councillors should not carry out their own unaccompanied site visits as there may be issues relating to permission for access to land, they will not have the information provided by the planning officer, and, in some circumstances, it may lead to allegations of bias.
- 1.27 It is recommended that the full Planning Committee should attend site visits, unless there are exceptional reasons. The clerk to the planning committee should record the date of the visit, attendees and any other relevant information.
- 1.28 The planning officer should prepare a written report on the site visit which should be presented to the Planning Committee meeting at which the application is to be determined.

1.29 **Legal Adviser**

The Department recommends that the Planning Committee has access to legal advice on planning matters and has suggested that it would prefer legal attendance at each Planning Committee meeting. Fermanagh and Omagh

District Council has resolved to have legal representation at each Planning Committee meeting.

1.30 Review of Decisions

It is recommended that on an annual basis, Members should inspect a sample of implemented planning decisions in order to assess the quality of decision making. This should include a sample of decisions delegated to officers to give assurance that the scheme of delegation is operating effectively and in line with the Council's views.

1.31 Departmental Comments

Members are advised that the Department strongly recommends that Councillors sitting on Planning Committees should be required to attend relevant training on an ongoing basis. It also recommends that the Planning Committee chairs should receive separate, additional training in relation to their roles. The Department suggests that a network of Planning Committee Chairs should be established and meet regularly to discuss matters of common interest.

1.32 Confidential Matters

In the event that the Planning Committee is required to go "into Committee" to consider confidential matters relating to a planning application, those parties with a direct interest in the application who have requested speaking rights in accordance with the Protocol, will be required to sign an undertaking confirming that they will respect the confidentiality of the meeting and the information discussed therein.

1.33 Good Practice Guide for Agents/Applicants

Fermanagh and Omagh District Council has developed a Good Practice Guide for Agents/Applicants (Appendix A). The rationale behind the development of this Guide is to provide advice and guidance to applicants and agents involved in the planning process to help deliver an efficient development management system, making best use of the Council's limited resources.

The objective is to build understanding, establish good practice and ensure that a full and robust process is undertaken, thus minimising potential delay in the delivery of the planning function, particularly in relation to local planning applications.

The guide sets out the progress of applications through the development management system and identifies the role/ responsibilities of Council planning staff and applicants / agents at each stage of the process in order to deliver good quality planning decisions in an efficient manner and at least cost.

The Good Practice Guide for Agents/Applicants takes effect from 1 December 2016 and is an integral component of the Council's Planning Committee Protocol.