



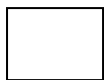
Joint Report of the Assistant Chief Executive (Corporate Governance) & Chief Planning Officer

Standards Committee

Date: 12 July 2007

Subject: Amendment to Code of Practice for Determining Planning Applications

Electoral Wards Affected: All



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

EXECUTIVE SUMMARY

1. This report proposes changes to the Code of Practice for Determining Planning Applications. It follows a report to Corporate Governance and Audit Committee (CG&AC) on 16 May 2007, regarding the governance of Plans Panels and constitutional changes, approved by Council on 24 May 2007, for the number of Members on Plans Panels and stipulations for compulsory training.
2. In addition to considering the constitutional issues CG&AC, resolved
“to request the Standards Committee to review the Code of Practice for Determining Planning Applications with a view to the Code stipulating that only those Members who have attended the site visit and have been present throughout the whole consideration of an application at the Plans Panel shall be entitled to determine the application”.
3. This report recommends amendments to the Code to require Members as a matter of best practice to attend all site visits of the Plans Panels and be involved throughout the whole process of determining an application. This will help improve public and developer perceptions of the quality of the decision making process in Leeds and reduce the prospects of judicial challenges based on the process of determining an application.

4. The report also proposes a number of other amendments to the Code principally to update the Planning Code to reflect the revised Members Code adopted by the Council on 24 May 2007.

1.0 Purpose Of This Report

- 1.1 To request the Standards Committee to review the Code of Practice for Determining Planning Applications with a view to the Code being amended to require, as a matter of best practice, the attendance of Plans Panel Members at the site visit and throughout the whole consideration of an application.
- 1.2 The report also proposes other amendments to update the Code in light of the revised Members Code. The Code, as recommended for amendment, is attached to this report as Appendix 1.

2.0 Background Information

- 2.1 This report follows the Strategic Review of Planning and Development Services which identified “Development of and Support for Plans Panels” as being one of the key improvement themes. Changes proposed by the Strategic Review included earlier Panel involvement in major schemes, measures for efficient and consistent decision making, standards for member training and improving the customer experience. The proposed change programme was approved by Executive Board on 14 June 2006.
- 2.2 A number of work streams around the change programme are progressing. Overview and Scrutiny Committee has been examining planning performance and have identified issues including the need to facilitate greater involvement in pre-application discussions at both Panel and Ward level and the need for Plans Panels to become involved in the Policy making process. A copy of this report has been made available to Members of the Standards Committee. (Further copies are available on request from the Clerk to the Committee). Accordingly, a comprehensive review of Plans Panel processes is underway and the outcome of this is to be reported to the Overview & Scrutiny Committee in September 2007.
- 2.3 Corporate Governance and Audit Committee (CG&AC) has also considered aspects relating to the governance of Plans Panels and at its meeting on 16 May 2007, CG&AC resolved

“to request the Standards Committee to review the Code of Practice for Determining Planning Applications with a view to the Code stipulating that only those Members who have attended the site visit and have been present throughout the whole consideration of an application at the Plans Panel shall be entitled to determine the application”.
- 2.4 The Planning White Paper, “Planning for a Sustainable Future” (May 2007) and other government documents and research reports¹ set out a clear direction for planning reform. In particular the Government’s recent consultation paper on Planning

¹ Councillor Involvement in Planning Decisions, DCLG Jan 2007

Barker Review of Land Use Planning, Kate Barker Dec 2006

Consultation Paper, Planning Performance Agreements, DCLG May 2007

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Performance Agreements proposes an agreed timetable for handling large planning applications, which will include Plans Panel involvement at key stages. The planning reform agenda nationally supports the approach which Leeds is already taking in its own change programme and the way in which Leeds is developing the role of its Plans Panels.

3.0 Main Issues

3.1 The Plans Panels deal with a wide range of planning applications ranging from applications which may come before the Panel only once, to major applications which may be presented to the Panel on a number of occasions. This may include the presentation of proposals at the pre-application stage where a more informal dialogue and workshop approach is taken and the submission of position statements, or issues papers to explore aspects of the application once the application has been received. Also there may well be a site visit and of course formal consideration of the application itself which may be deferred for clarification, further information or consultation on a particular aspect and therefore may come back to Panel possibly on two or three occasions.

3.2 Pre-Application Position

Because of the long timeframe which is often involved, the Code (as proposed for amendment) does not expect that all Panel Members will necessarily have been involved at the pre-application stages (for example pre-application presentations and site visits, workshops, developer presentations and forums). However, Members involvement in pre-application discussion is strongly encouraged in the planning reform agenda and further detailed recommendations about the pre-application process will be contained in the review of Plans Panels identified in Paragraph 2.2. Leeds had already decided to develop the role of Plans Panels to include pre-application presentations and discussion as one of the outcomes of the Strategic Review. It is proposed, therefore, to amend the Code to strongly encourage involvement in pre-application discussion in appropriate cases, subject to the necessary safeguards relating to probity and pre-determination which are already set out in the Code. Proposed amended wording is shown at paragraph 10.1 of the revised Code attached at Appendix 1.

3.3 Post Submission Position

Following the submission of a planning application, the role of the Panel is a more formal one. As was mentioned above, the application may come before the Panel at a number of key stages and on each of these occasions information will be before the Panel which will be relevant to the actual decision making process. For example when the application comes before the Panel, in addition to the Officer's report and recommendation there may well be a display of materials including e.g. photographs and plans, representations may be made to the Panel by the applicant and/or objectors and an oral update may be given by the Planning Officer. It is therefore considered that each of these occasions brings the opportunity for Members to receive this information first hand and build up a full and comprehensive picture of the relevant planning issues. In addition, the formal site visits undertaken by the Plans Panels provide an additional fact finding opportunity which may in certain cases provide Members with information that they could not have obtained by alternative means.

- 3.4 Not only does attendance on each of these occasions ensure that the Members of the decision making panel all have the benefit of receiving the same and fullest level of relevant information but with respect to the public perception of the planning system this also assists in demonstrating a robust and consistent process and as such assists in reducing the risk of a legal challenge or a claim for maladministration to the Ombudsman.
- 3.5 The recommendation from CG&A was effectively to consider whether the Code could prescribe that only Members who have attended the site visit (if there has been one) and been present throughout the whole consideration of an application could take part in the decision making process on an application. This option has been considered and explored and is proposed in this report not as a compulsory requirement but rather is required as best practice. The report advocates this approach for the following reasons:
- It is possible that an application may come before the Panel on several occasions (including a site visit). It is also recognised that members may genuinely be unable to attend on each occasion e.g. by being unwell or on holiday etc. As Plans Panels require 4 members to be quorate, there is therefore a risk that if members are prevented from taking part in the decision through absence at an earlier stage the Panel could be inquorate at the time of determination. This would not be a situation that could be remedied in terms of that application retrospectively and therefore either the application would remain undetermined or a new application would have to be submitted. It could be argued that this is not a reasonable approach albeit that the reasons and principles behind this are intended to enhance the planning process.
 - There is no legal requirement that a Member must be present on each and every occasion (including site visits) at which an application comes before the Panel. The test is whether the Member at the point of taking the decision has all the relevant information before him or her on which to properly make a decision. This would be a matter for a Member to judge for him or herself (with the benefit of advice and guidance from the Chief Legal Services Officer and Chief Planning Officer as necessary). In some instances it may be essential that a Member has attended the formal site visit, it is a question of fact and degree in each case.
- 3.6 It is therefore proposed that attendance is required as a matter of best practice, with an expectation that Members will be present at each of the formal stages of the application including presentations and the reporting of position statements and issues papers and will attend all formal site visits. To highlight the importance of this, a record of attendance at site visits will be maintained and monitored and consistent failure to attend site visits by a Member would be referred to the party leadership for appropriate action.
- 3.7 The particular importance of the formal site visits is that this provides an opportunity for all Plans Panel members to observe the same factors and particular aspects of a proposal whether this be visual, design, character or other specific aspects in the same way. In some instances site visits may provide members with the opportunity to go onto private land or into dwellings or other buildings and therefore provide an opportunity to receive information that could not be obtained even from an informal

personal visit to the closest public point and which might otherwise have been overlooked.

- 3.8 This ensures that all Members taking part in the decision making process have been appraised of the whole facts necessary to properly reach a decision and this is demonstrated to all those interested in the decision making process. In some instances therefore a site visit may be essential and in others it may not. That may not always be apparent in advance of the site visit itself and therefore there will be an expectation within the Code that Members will attend all site visits.
- 3.9 The Code of Practice as presently worded advises that Plans Panel Members should “...try to attend all site visits organised by the Council...” and that they should not vote or take part in the discussion on a proposal unless they had been present to hear the entire debate. It is proposed that this is replaced with the wording at paragraph 12.0 of Appendix 1.
- i. To ensure that Members taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit by Plans Panel, matters that may have been raised during public speaking and matters that may have been discussed and considered by Plans Panel on earlier occasions
 - ii. To ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised
 - iii. To support the development of Plans Panel’s role in exercising impartial planning decision making, which is separate from the constituency role
 - iv. To support Plans Panels in becoming more involved throughout the scheme development process
- 3.10 The above recommendations apply only to the timeframe for determining a specific application (i.e. from submission through to decision in any particular case). There would be no expectation that Members deciding an “approval of details” proposal should have been present throughout the consideration of the outline, or that Members should have been present throughout the consideration of an earlier refusal, where the matter before them is an amended scheme.
- 3.11 Amendments proposed to reflect the revised Members’ Code

Other recommended amendments to the Code are more minor in substance. The most significant of these is the revision to paragraph 16.0 of the Code which cross references to the Public Speaking Protocol. Previously, a Member with a prejudicial interest could not address the Panel in any capacity, whether personal, as a representative or Ward Member. The revised Members Code has relaxed this prohibition to enable a Member to speak and address the Panel in accordance with arrangements put in place for public speaking (in Leeds these arrangements are set out in the Public Speaking Protocol) provided that the Member leaves the meeting room immediately thereafter and does not stay in the room to hear the debate and the decision being taken, even though the public may remain. The changes to the Members Code are reflected in the proposed amended wording to the Planning Code.

4.0 Consultation

- 4.1 Consultation on the proposals has been carried out with the Whips and the three Plans Panel Chairs. There was also a useful opportunity to discuss these at a Plans Panel workshop earlier this month. It is fair to say that a range of views were expressed from those that responded. Some Members considered that the Code did not go far enough and that attendance at site visits should be compulsory for Members wishing to take part in the decision making process. Others expressed the view that the proposals were about right, whereas some felt that these were too restrictive and onerous on individual members.
- 4.2 The responses did indicate that there was a degree of uncertainty as to whether the need to attend extended to workshops or the pre-application stage. This is not the intention, and the position regarding these stages is set out at paragraph 3.2 of the report. Namely, Member involvement is to be encouraged in appropriate cases within a clear and prescribed framework, however the requirement for attendance will not be extended to this early part of the process. A footnote has therefore been added to the relevant part of the Code (para 12.0) to make this clear. Concern was also raised about the numbers of site visits undertaken by the Panel and whether these were always strictly necessary. This is a separate issue which will be addressed through the Panel Review process which is underway.
- 4.3 In respect of the concerns raised that the proposals do not go far enough, there was an opportunity for officers to discuss the reasons for the approach more generally at the recent workshop event and although it is fair to say that the members still felt that they would like to see a stronger line, there was an understanding, by those members present, of the reasons put forward (summarised at paragraph 3.5 of this report) as to why this approach is considered to be the preferred one.

5.0 Implications For Council Policy And Governance

- 5.1 The proposal in this report will be beneficial to the Council in supporting the clear governance framework for Plans Panels now set out in the Constitution, and its changing role within the planning reform agenda.

6.0 Legal And Resource Implications

- 6.1 These proposals are consistent with the latest DCLG guidance and promote best practice thus reducing the scope for successful legal challenges to be brought against decisions of the Plans Panels.

7.0 Conclusions

- 7.1 The proposed amendments to the Code of Practice set out in this report are part of a package of measures to support the changing role of Plans Panels under the planning reform agenda and change programme at local level. The proposals will support Members and officers in using time effectively on the key areas of decision making, particularly on the most significant and controversial applications, and will help to ensure that sound decisions are taken with Members in possession of all the facts.

7.2 The proposals will help applicants and others involved in the development process by delivering more timely and predictable outcomes and help to send a wider message to the development community in attracting new investment and helping the City to 'Move up a League'.

8.0 Recommendations

8.1 It is recommended that the Code of Practice for Determining Planning Applications is amended, as set out in Appendix 1 to this report, to require as a matter of best practice Member attendance at the site visit and throughout the whole of Plans Panel's consideration of an application.

8.2 It is also recommended that other amendments are made as set out in Appendix 1 to this report including those to encourage Member involvement in pre-application discussion and updating changes to reflect the new Members Code adopted by the Council on 24 May 2007.