

PLANNING DEVELOPMENT CONTROL COMMITTEE

30 July 2009

MEMBER INVOLVEMENT IN CONSIDERING AND DETERMINING PLANNING APPLICATIONS

REPORT OF HEAD OF PLANNING MANAGEMENT

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report updates the Committee regarding the previous and potential future roles of Planning Development Control Sub Committees (also known formerly as working parties). It also considers the role of Members in planning applications prior to the decision-making process.

RECOMMENDATIONS:

1. That the Committee notes the position regarding sub-committees and considers their formation only in exceptional cases.
2. That Member involvement at other stages in the process be considered at an informal meeting of the Committee at a future date.

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Report of Head of Planning Management

1 Introduction

- 1.1 This item is brought to the Planning Development Control Committee (PDC) by the Heads of Planning Management and Legal Services, following the request of Cllr Tait, further to his enquiry regarding the cessation of working parties.
- 1.2 The report sets out the background and previous operation of sub-committees/working parties, and also looks at Member involvement in planning applications at the pre-application stage.

2 Background

- 2.1 In the past sub-committees (also known as working parties) of the Planning Development Control Committee (PDC) had been formed in order to consider development proposals which had, or were likely to, come forward in relation to particular sites or areas of the District. These sub-committees were created by PDC which also determined their membership and terms of reference.
- 2.2 Sub-committees were often created for very large sites, such as Knowle Village and the Whiteley Development Area, and for those which were regarded as being important for other reasons. For example, there were sub-committees in respect of the Police Headquarters and Peter Symonds College, Winchester, and the Bugle Inn at Twyford. In addition, sub-committees were sometimes used to look at development within certain parts of the District, where there was substantial pressure for development on a number of sites (Chilbolton Avenue, Winchester), or in areas which were seen as being particularly sensitive to development (St. Cross, Winchester).
- 2.3 As indicated above, the purpose (terms of reference) of each sub-committee was set by PDC. These committees were generally required to consider planning applications and make recommendations to PDC. Occasionally, they would have a different function such as producing a draft development brief for a site. Sub-committees did not historically determine applications as this responsibility remained with PDC but more recently this has changed with the formation of the Telecommunications and Viewing Sub-Committees.
- 2.4 A sub-committee would usually convene on site, where members would consider a proposed scheme, usually with the benefit of an officer's report, and they could also take into account contributions by the developer, public,

and other interests groups as well as ward councillors. The sub-committee would then decide whether to make a recommendation to PDC where the application would be determined. In certain cases the sub-committee would resolve not to support or object to the application but would simply ask for certain matters to be clarified or amended before it proceeded to PDC for a decision.

- 2.5 In some cases involving very significant developments (e.g. the Whiteley Motorway Service Area), a working party was formed before an application had been received. The working party would meet in public to consider presentations by the developer on the proposed development, and hear comments from the public. The process would often therefore shape the application before it was submitted, and often the same working party would consider the application once it had been submitted, before reporting back to PDC as outlined above.
- 2.6 Each year, PDC would also decide whether to continue with each sub-committee. If Members agreed that a sub-committee was no longer necessary, they would resolve not to re-appoint it.
- 2.7 The historic operation of working parties and sub-committees as set out above pre-dates the introduction of the Statement of Community Involvement (see Section 4 below) which has imposed clear requirements on developers to carry out pre-application consultation.

3 Current Position

- 3.1 In recent years the number of sub-committees has decreased so that, at present, there are only two in operation; the PDC (Telecommunications) Sub-Committee and PDC (Viewing) Sub-Committee. This reduction is not the result of an officer decision to discontinue sub-committees. It has arisen because PDC has not created any new sub-committees and took the decision in May 2006 to discontinue the sub-committees which had been running in the previous year (for Chilbolton Avenue, Chesil Street, the Police HQ, Knowle Village, Peter Symonds College and the Bugle Inn).
- 3.2 The Constitution (Council procedure Rule 20(2)) permits a Committee such as PDC to appoint sub-committees (either on a continuing or ad hoc basis) to consider any matter relevant to the business or responsibility of the Committee. Unlike other Committees, PDC does not require the setting up of the sub-committee to be considered by Cabinet first. It would therefore be possible for PDC to decide to set up a sub-committee to look at developments coming forward on a particular site or within an area of the district.

4 Future for Sub-Committees

- 4.1 As indicated above, it is still open to PDC to set up sub-committees to consider development proposals. It would be possible to effectively re-introduce the practice of sub-committees to look at particular sites or areas

but this would have very significant resource implications in terms of both officer and Member time although it is recognised that they did provide a useful forum which enabled a range of interested parties to discuss development proposals and to identify issues and concerns which were then reported back to PDC. However, sub-committees of this type have not operated for approximately three years without any apparent adverse effects upon the quality of the decision-making process. Whilst it is understood that Members sometimes conclude that they do not have all of the information to hand to enable them to make a decision at PDC, they are able to defer the matter to the Viewing Sub-Committee, using the pre-agreed procedures which are in place for the operation of such sub-committees.

- 4.2 There has also been a significant change in the way development proposals are produced since April 2008. Applicants for planning permission need to comply with the Council's Statement of Community Involvement (SCI) when submitting applications for all but the most minor developments. Applicants are now required to consult interested parties, such as parish councils and site neighbours, before making a formal application. This provides an opportunity for members and interest groups to have an input into the development process before the application details are finalised and submitted to the Council for determination.

5 Bias and Predetermination

- 5.1 Members of PDC taking part in the decision-making process are required to ensure that they are not biased or predetermine the application. Detailed guidance on this is set out in the Planning Protocol. Essentially, Members are advised to ensure that they remain impartial at all times (including at any meetings or discussions prior to the decision-making meeting itself). Stating an opinion on the merits of the application should be avoided until the PDC meeting where the application is to be determined. Members must be prepared to be open-minded and consider the arguments and debate at the meeting itself.
- 5.2 Whilst Members may be *predisposed* to a particular view (because of their general opinions on a type of development, or the nature of the area where the development is sited), Members cannot come to a PDC meeting having already made their mind up about an application. Such a "closed mind" would mean that the decision could be challenged and possibly quashed if the Court considered that the Member had *predetermined* the application.
- 5.3 Clearly, the safest course is to avoid any discussions or involvement in an application whatsoever until the PDC meeting itself. Members have in the past been concerned about whether they will be able to participate in a PDC meeting to determine an application if they have previously been involved in a working party or other discussions about the development. There have been a considerable number of cases in recent years on bias and predetermination, and the Courts have recognised that Members may be expected to have views on planning matters. Clear pointers will be required before the Courts

will hold that a councillor's mind was closed (or apparently closed) when the decision is taken.

- 5.4 Notwithstanding this, the question of potential predetermination remains an issue which Members need to be aware of and avoid. There is a risk that Members expressing views regarding the acceptability of a proposal at a sub-committee meeting, prior to consideration of the scheme by PDC, may have actually or apparently pre-determined the application. This might prevent them from taking part in the determination of the application at PDC or may make decisions taken by committee more vulnerable to challenge by Judicial Review. There would also be an issue regarding whether the sub-committee should be empowered to resolve the application itself, or whether it should make a recommendation to PDC.

6 Member Involvement in Pre-application Discussions

- 6.1 Advice from the Local Government Association has indicated that there is a role for Members to play in discussions between developers and the local planning authority prior to an application being submitted. However, this advice is tempered by guidance which strongly suggests that such involvement is carefully structured and documented, to minimise/avoid the likelihood of challenge. The advice includes the following points:-
- Any discussions with developers or applicants should be part of structured arrangements agreed with officers;
 - In any discussions with applicants or agents regarding planning applications, Members should be aware of the distinction between
 - (i) giving and receiving information (which is acceptable) and
 - (ii) engaging in negotiations (which should not happen).
 - Councils should clarify the role of Members and the limits of engagement with applicants, and include this in local protocols.
 - Presentations by applicants should be limited to the development proposal and a question and answer session on factual matters. Where appropriate such meetings may take place on site and incorporate a site visit.
 - Members should maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining the adopted local policies. Questions should clarify aspects of a proposal, but not develop into negotiations.
 - A written note of the proceedings should be kept, to include a record of officer attendance and follow up.

- Officers of appropriate seniority should attend. For major or contentious applications, Members' involvement should be authorised by PDC Committee. Their involvement should be recorded in any subsequent committee report.

- 6.2 Clearly, similar principles can be applied to Member involvement in public meetings and consultation organised by the developer (rather than the Council) under the requirements of the SCI. In both cases, it is considered that there is a need for detailed written structures and guidance.
- 6.3 It is suggested that these issues are discussed by PDC at an informal meeting in the first instance, with a view to preparing such written structures and guidance as a result.

7 Conclusions

- 7.1 Whilst it is acknowledged that the previous practice of creating sub-committees to look at particular sites had benefits in terms of involving members, the public and other interest groups in the shaping and consideration of development proposals, prior to decisions being made by PDC, a return to the previous practice would present a number of issues and difficulties.
- 7.2 As explained above, these sub-committees would be resource-intensive which would place significant pressures upon both officers and Members. Furthermore, operating these sub-committees along the same lines could give rise to a greater risk of pre-determination and consequent challenge.
- 7.3 Moreover, the planning landscape has also changed recently so that developers are now required to engage with interested parties much earlier in the process which arguably reduces the need for sub-committees.
- 7.4 As a result, it is not recommended that practice of routinely forming sub-committees to consider particular developments or sites be re-established. However, where there is a consensus at PDC that a matter warrants such particular attention it would still be open to members to form a sub-committee. The terms of reference would need to be carefully defined so that the purpose of the sub-committee was clear and avoided some of the potential problems referred to above.

OTHER CONSIDERATIONS:

8 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

- 8.1 This report contributes to the “Dynamic Communities” element of the Vision for the Winchester District:-

“Mobilising people to take action, creating opportunities to get involved

in their communities and helping them play an active role in developing solutions to local issues.”

9 RESOURCE IMPLICATIONS:

- 9.1 Increasing the number of Sub-Committees would lead to an increased need for officer and Member time. In addition, financial resources for room hire and travel expenses would be required.
- 9.2 Involving Members in pre-application discussions between officers and developers would entail a marginal increase in officer time over and above what would be required in any event.
- 9.3 Additional training for Members would also be required in any new systems and procedures which would be introduced.
- 9.4 Any challenge to a decision involves the need for financial resources and officer time, some (but not all) of which may be recoverable if the challenge is successfully defended.

10 RISK MANAGEMENT ISSUES

- 10.1 A key issue in this report is ensuring that any risk of challenge to a decision is minimised. Any challenge requires resources to be diverted from other work (in terms of legal and planning officer time) as well as financial resources (e.g. external advice and possible costs of the person challenging the decision).
- 10.2 Whilst avoiding any form of pre-application involvement of Members would reduce any such risk, the emerging guidance and case law suggests that, provided appropriate structures and processes are put in place, member involvement is possible (and indeed desirable) without significantly increasing the risk of challenge.

BACKGROUND DOCUMENTS:

None

APPENDICES:

None