

# **Comhairle Ceantair an Iúir Mhúrn agus an Dúin**

## **Newry, Mourne and Down District Council**

### **Planning Committee**

#### **Operating Protocol**

#### **INTRODUCTION**

1. The following protocol has been developed for use by the Planning Committee (“the Committee”). It should be read alongside relevant provisions of the Council’s Standing Orders and the Code of Conduct for Councillors and is not intended to replace either document. The key aims of the protocol are to ensure that the Committee makes decisions in a sound, lawful and transparent way and in a timely and efficient manner.

#### **REMIT OF THE COMMITTEE**

2. The primary roles of the Committee will include:
  - (a) Consideration of applications for planning permission and consents in accordance with the Council’s Scheme of Delegation.
  - (b) Exercising the Council’s powers and duties in relation to planning policies and plan strategies.
  - (c) Responding to consultations in relation to regionally significant or major applications to be determined by the Department of Environment or relevant Department.
  - (d) Responding to consultations issued by the Department of Environment or relevant Department, or any other Department, in relation to planning matters.

## **FREQUENCY & TIME OF MEETINGS**

3. It is recommended the Committee shall meet every fourth week, though there should be flexibility for additional meetings if required.
4. Dates and times will be advertised at least 5 days in advance on the Council website and at the Council's main offices at Downpatrick and Newry.

## **SCHEME OF DELEGATION**

5. As required by Section 31 of the Planning Act (NI) 2011 the Council will operate a scheme of delegation for planning, outlining delegation both to the Committee and Officers (this can be found on the Council's website and at the Council's main offices at Downpatrick and Newry). The overall objective is to ensure that arrangements for decision-making on applications for local developments are effective whilst ensuring that proposals that raise strong local views or issues for the district can be dealt with by elected members. Delegating determination of some planning applications to Officers is also seen as a critical factor affecting the overall performance of the development management process as it helps ensure that decisions are taken at the most appropriate level, procedures are clear and transparent, costs are minimised and members have more time to concentrate on complex applications.
6. The following applications cannot be delegated and therefore must be presented to the Planning Committee for determination:
  - Applications which fall within the Major category of development;
  - An application for planning permission where the application is made by the Council or an elected member of the Council;
  - The application relates to land in which the Council has an interest or estate.

7. The Scheme of Delegation delegates all local development applications to Officers for determination, whether for approval or refusal, except in relation to the following circumstances which must be presented to the Planning Committee for determination:
- An application recommended for refusal except where;
    - there are active Enforcement issues
    - all necessary documentation pertaining to the application, having been reasonably requested and, without reasonable justification, has not been provided within three weeks of the request
  - Applications which are significantly contrary to the development plan and which are recommended for approval;
  - Applications attracting six or more material planning objections from different addresses where the officer's recommendation is for approval;
  - Applications attracting material planning objection from a statutory consultee, where the officer's recommendation is for approval;
  - An application which the Chief Planning Officer considers should be brought before and decided by the Planning Committee;
  - Applications referred to the Planning Committee by a Member of the Council who represents the DEA in which the land to which the application relates is situated, although in exceptional circumstances members from outside the DEA may be permitted to request the referral of an application to Committee. Any such referral, or request for referral where the application is not in the Member's DEA, must be made in writing to the Chief Planning Officer within 25 days of receipt of the application and accompanied by a material planning reason
  - Applications which are submitted by members of staff directly involved in the consideration of planning applications and officers of the Council at the level of Head of Service or above.
8. Enforcement activities are also delegated to The Chief Planning Officer. The Committee will receive regular reports on enforcement matters.
9. All Members of the Council will receive a weekly list containing details of all valid applications received and all decisions issued under the scheme of delegation.

## **FORMAT OF MEETINGS**

10. Committee Meetings (dates, times and papers) will be published on the Council's website at least 5 days in advance.
11. Case Officer Reports will also be available on the Northern Ireland Planning Portal.
12. Committee papers will typically include the following:
  - a) Minutes of the previous meeting for approval;

### For decision/discussion

- b) Details of non-delegated applications (including those brought back following deferral) for consideration by the Committee;
- c) Details of applications of regional significance with an impact upon the Council area in respect of which the Council is a statutory consultee or where it may wish to make representations;
- d) Correspondence received from statutory consultees

### For noting

- e) Details of proposed pre-determination hearings;
  - f) Details of delegated applications for noting only by the Committee;
  - g) Details of appeals (notified and concluded).
13. Members, staff directly involved in the consideration of planning applications and Officers of the Council at the level of Head of Service or above must pass to the Planning Case Officer any representation(s) received in respect of a planning application for inclusion in the planning file.
  14. A quorum, as outlined in the Council's Standing Orders, is required for the Committee to convene; the quorum being half (six) of the members of the Committee.

- 15.** Members will be required to declare an interest in any item on the agenda at the beginning of the meeting and must then leave the table when the matter in which they have declared an interest is being discussed. Once a decision had been made in respect of that item, the Member will then be invited to return to the table before consideration of the next item commences.

The Democratic Services Officer will record when members enter and leave the room during the course of the Meeting.

- 16.** The Committee will discuss each application that has been presented, for a maximum of 20 minutes (with extension at the Chair's discretion), before taking a vote on one of the following options:
- 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 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 recommendations;
  - g) Defer the application with a direction for additional information or clarification; or for a Members' site visit.

- 17.** 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. The Committee will therefore generally only defer an application once. The Member proposing deferral must provide clear relevant planning related reasons as to why a deferral is necessary. If a Committee Member was not present for the initial discussion/debate in relation to a deferred application, or did not attend a site visit, he/she cannot participate in the discussion on, nor vote on that application when it is subsequently presented to Committee.

18. The Chair has a casting vote.
19. 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. However the Chairperson of the Planning Committee can use their discretion in exceptional circumstances in accordance with the Council's standing orders.
20. Following issue of the agenda Committee Members may request the attendance of statutory consultees and this request must be submitted through the Chief Planning Officer at least one week in advance of the Committee Meeting.

### **PUBLIC REPRESENTATIONS**

21. Meetings of the Committee will be open to the public, however, seating within the Committee Chamber will be limited according to the venue capacity and associated fire and safety regulations.
22. Seating for the applicant and/or their agent and objectors will be reserved but only for the time during which the relevant application is being considered. Otherwise seating will be on first come first served basis.
23. If a member of the public wishes to speak at Committee they must contact Democratic Services by telephone or by email ([democratic.services@nmandd.org](mailto:democratic.services@nmandd.org)) at least 5 working days before the date of the meeting at which the application will be considered. Only those who have made written submissions in respect of a planning application and registered a request to speak in respect of the application shall be permitted to make oral representations before the Committee.
24. Each deputation who wishes to appear before the Committee shall submit a prepared statement in advance of the meeting and shall only be permitted to speak to that statement, except in those circumstances outlined elsewhere in the

Protocol, when addressing the Committee. Deputations will not be permitted to circulate papers to members at the Committee Meeting.

- 25.** All information must be submitted a minimum of 5 working days in advance of the Committee Meeting to ensure that the issues raised can be fully processed and considered by officers prior to the Committee Meeting. Late information may therefore be disregarded or result in consideration of the application being deferred if officers have not had an opportunity to fully investigate and process said information. In deciding whether to disregard late information Committee will consider whether it is fair in all the circumstances to allow the late information to be submitted, and in particular whether the information is material, how long the party seeking to introduce it has known about its existence; the length and reason for any delay and the promptness with which the party seeking to rely on the late information acted.
- 26.** All Committee papers will be available online. However, access to some documentation may be restricted by virtue of the Council's publication policy. Information which is determined to be exempt by virtue of Schedule 6 of the Local Government (Northern Ireland) Act 2014 may be published where the Council considers that the public interest in disclosing same outweighs the public interest in maintaining the exemption.
- 27.** Documentation should not be provided directly to a Council Member. However, if documentation is provided directly to any member of the Council in relation to a particular application it must be copied to Democratic Services Section and to the Chief Planning Officer.
- 28.** Deputations shall be heard in the following order:

  - a) Objectors and/or their representatives;
  - b) Applicant and/or their representatives and/or those supporting the application
- 29.** The Council will not notify applicants or those who have made representations in respect of a particular planning application that a request to address the

Committee has been received. Applicants and those who have made representations in respect of a particular application that appears on the Committee agenda may contact Democratic Services in advance of the relevant meeting to ascertain whether there have been any such applications.

- 30.** Only one deputation on behalf of those objecting to the application will be permitted to address the Committee. Only one deputation on behalf of the applicant and/or those supporting the application will be permitted to address the Committee. Additionally Elected Members from the DEA specific to the planning application may make the representation in line with paragraphs 46, 47 and 48.
- 31.** Deputations, unless otherwise agreed in advance by the Committee, shall consist of no more than 3 persons. Where there are 3 or more persons or groups wishing to address the Committee they will be required to arrange a single deputation to express their representations.
- 32.** If more than 3 persons have registered a request to speak in support of or in objection to an application, the Council will notify, in so far as reasonably practicable, those persons that they may not be guaranteed an opportunity to address the Committee. They will be invited to attend Council offices an hour before the Committee is due to start so that they can agree a deputation of speakers. If agreement cannot be reached the places on the deputation shall be allocated by planning officers so as to ensure that the deputation is representative of the range of issues raised by those who have made representations.
- 33.** The applicants or their representatives, right to address committee shall be prioritised over other persons/groups wishing to speak in support of an application.
- 34.** Deputations shall be confined to the making of a 5 minute address either by each member of the deputation or, should they so wish, by their nominated spokesperson or legal advisor.

- 35.** Each deputation shall be permitted a maximum of 5 minutes to address the Committee. Where more than one person wishes to speak, the 5 minutes will be shared between the members of the deputation.
- 36.** All members of a deputation must continue to be seated and remain silent whilst other deputations are being made to the Committee.
- 37.** Cross-examination, discussion or any type of debate between persons making representation to Committee shall not be permitted.
- 38.** Once all deputations have been made, by invitation of the Committee Chair, the parties shall be permitted an opportunity to rebut any factual inaccuracies which may have arisen from the oral representations of another deputation but it will only be permitted in respect of a factual inaccuracy which they have not had a previous opportunity to comment upon. This will be strictly limited to responding to any such issue and the party will not be permitted to rehearse representations which have already been made.
- 39.** The Committee may, upon advice from officers, exclude any deputation from being present during the whole or part of the time due to the confidential nature of the information being presented; or for such other reasons as may be deemed appropriate having regard to Schedule 6 of the Local Government Act (Northern Ireland) 2014.
- 40.** The Committee may seek clarification from those who have spoken on any issues raised by them but must not enter into a debate.
- 41.** Officers can address any issues raised during the course of representations from any deputation and the Committee may seek clarification from officers.

42. The Chair will ensure that those making representation to the Committee adhere to the time limits set out in this protocol. These time limits will have been communicated to those making representations in advance of the meeting.
43. The Chair may at any time during the hearing of deputations, if they think it necessary to secure order, suspend the meeting and direct the removal of any individual from the meeting, or order that the meeting be cleared of all deputations.
44. When hearing deputations, the Chair will require members engaging in debate to desist, until such time as all relevant information has been received.
45. The Chair may bring the questioning of any person appearing before the Committee to a close provided s/he is satisfied that all relevant issues have been addressed. The Chairperson may also prevent duplication of questions being put.
46. If a member of the Committee moves that the question be put to a vote and the Chair is of the opinion that the application before the Committee has been sufficiently discussed, s/he shall put the motion to the vote.

#### **REPRESENTATIONS BY MEMBERS**

47. Members who represent the DEA specific to the location of a planning application, and who wish to address the Committee, must notify Democratic Services 5 working days prior to the Committee meeting. These speaking rights are not extended to Members from outside the specific DEA unless a Member from outside the DEA has previously requested the application be referred to the Committee in accordance with Paragraph 7 of this Protocol.
48. All information must be submitted a minimum of 5 working days in advance of the Committee Meeting to ensure that the issues raised can be fully processed and considered by officers prior to the Committee Meeting. Late information may therefore be disregarded or result in consideration of the application being

deferred if officers have not had an opportunity to fully investigate and process said information. DEA Members, or other Members wishing to address the Committee who have complied with Paragraph 7 of this Protocol, will not be permitted to circulate papers to Committee Members at the Meeting.

49. DEA Members who wish to address the Committee, or other Members wishing to address the Committee who have complied with Paragraph 7 of this Protocol, will be permitted to do so for a maximum of 2 minutes. This 2 minutes to be shared among all DEA Members wishing to address the Committee, regardless of the number of Members to speak.
50. Those members who sit on the Committee and wish to support or oppose an application are free to do so but cannot take part in the decision-making process. It is important that the public see that they are not acting in their capacity as a Committee member. When that application is being discussed the member must leave their seat and sit with the other parties who are making representations. Once a decision has been made on that application the member can return to their seat as part of the Committee.

#### **DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

51. The power to decide an application lies with the Committee and it is entitled to come to a decision contrary to Officers' recommendations.
52. Any such decision may be subject to legal challenge and Members must therefore ensure that the rationale for the decision is fully explained and based on proper planning considerations.
53. The Chief Planning Officer or other Senior Planning Officer and/or the Council's Legal Advisor will always be given the opportunity to explain the implications of the Committee's decision prior to a vote being taken on any such proposal.

- 54.** The reasons for the decision contrary to the Officer's recommendation must be formally recorded in the minutes and a copy placed on the planning application file/electronic record.

### **DECISIONS CONTRARY TO PLANNING POLICY**

- 55.** In general, planning decisions should be taken in accordance with the relevant Development Plan and any other associated planning policy documents. If a Committee Member proposes, seconds or supports a decision contrary to the local Development Plan they will need to clearly identify and understand the planning reasons for doing so, and clearly demonstrate how these reasons justify departure from the relevant Development Plan. The reasons for any decisions which are made contrary to the relevant Development Plan must be formally recorded in the Minutes and a copy placed on the planning application file/electronic record.

### **PRE- DETERMINATION HEARINGS**

- 56.** The Committee must hold pre-determination hearings for those major developments which have been subject to notification in accordance with Regulation 7 of the Planning (Development Management) Regulations (NI) 2015 (i.e. referred to the Department but returned to the Council for determination) prior to the application being determined.
- 57.** If the case officer recommends approval in the circumstances set out within The Planning (Notification of Applications) Direction 2015, the application will be reported to Committee as a minded to approve report. If Committee is minded to agree with the officer recommendation, the application must be notified to the Department who may decide to 'call in' the application. If the Department do not 'call in' the application, Committee must hold a pre-determination hearing and all those persons who submitted representations to the application should be afforded an opportunity to appear before the Committee, subject to the provisions of this Protocol. No decision is taken at a pre-determination hearing.

58. The Committee may also hold a pre-determination hearing, at its own discretion, where the Committee considers it necessary to do so.
59. A pre-determination hearing will take place after the expiry of the period for making representations on the application but before the Committee meeting which is due to determine the application.
60. After the pre-determination hearing, officers will prepare a report taking into account the representations made and present that to a subsequent Committee which then proceed to determine the application. In exceptional circumstances the Committee may depart from that procedure and hold the pre-determination meeting and substantive decision making meeting on the same date.

### **LOCAL DEVELOPMENT PLAN**

61. The Local Development Plan will be prepared by the Development Plan Team and considered and agreed by Council's Strategy Policy and Resources Committee in conjunction with the Planning Committee. It will then require approval by resolution of the Council.
62. The Strategy Policy and Resources Committee, in conjunction with the Planning Committee, shall ensure that the Local Development Plan is monitored annually, particularly in terms of the availability of housing and economic development land.
63. The Strategy, Policy and Resources Committee, in conjunction with the Planning Committee, shall review the Local Development Plan every five years.

## **SITE VISITS**

- 64.** Site visits may be arranged subject to Committee agreement. They should normally only be arranged where the impact of the proposed development is difficult to visualise from the plans and other available material and the expected benefit outweighs the delay and additional costs that will be incurred.
- 65.** No one, other than Members of the Committee and Officers plus any other statutory consultees, may participate in a site visit.
- 66.** Members will not carry out their own unaccompanied site visits as there may be issues around permission to access the land, they will not have all of the relevant information from the relevant Planning Officer and, if a Councillor is seen with an applicant or objector, it might lead to allegations of bias.
- 67.** A nominated officer shall attend the site visit and will record the date of the visit, attendees and any other relevant information. This record will be placed on the planning application file/electronic record.
- 68.** The Chairperson, or Deputy Chairperson in the Chairperson's absence, with the assistance of Council Officers present, will ensure that the site visit is conducted in accordance with this Protocol and the Code of Conduct for Councillors and will ensure that the merits of the application are not discussed.
- 69.** The Planning Officer will remind Members, at the outset of the site visit, of the proposal and the main issues.