

## PLANNING COMMITTEE

### DATE OF COMMITTEE

29<sup>th</sup> March 2016

## REPORT OF HEAD OF PLANNING AND REGENERATION

### GBSLEP – GUIDANCE NOTES

#### EXEMPT INFORMATION

None

#### PURPOSE

The purpose of the report is to consider a set of guidance notes prepared by the Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) that they wish each Local Planning Authority in the GBSLEP area to adopt. Comments made by the Planning Committee will then be reported to Cabinet to aid the official Council response.

#### RECOMMENDATIONS

- 1. That the report and the suggested response to the GBSLEP working party contained within are endorsed and recommended to Cabinet to inform the Councils official response, along with the views of Planning Committee.**

#### EXECUTIVE SUMMARY

Guidance notes (see Appendices) relating to 1) Planning Conditions; 2) Member Involvement in the Planning Application Process; 3) The Pre-Application Process; and 4) Planning Obligations, have been produced by sub groups within the development management working party of the GBSLEP, each with input from a range of the interested parties with the aim of making a simpler and more unified development management experience for applicants in the GBSLEP area.

This work has been shared with Lord Taylor of Goss Moor, who chaired the group that led to the introduction of the on-line National Planning Practice Guidance, who was supportive of the approach and commented that:

*“These guidance notes are an innovative collaboration between local authorities and the LEP to support better, quicker planning. ‘Joined up thinking’ is easy to say but too often not delivered in practice – but this approach helps deliver just that, with a best practice agenda in which both planners and developers are signing up to play their part. I thoroughly commend it.”*

It was hoped that this work could then be taken to the member councils for agreement and adoption.

Whilst it is agreed that the general principles are sound, and well intentioned, officers have some concerns over some specific details,. Officers comments on each note are as follows:

#### 1) Planning Conditions

The note sets out the statutory test for conditions, and the guidance on the proper use of planning conditions. It also advocates working with the applicant to minimise the number of required conditions through a robust initial submission, and setting an order of conditions. These are all sensible points and should be supported and reflect existing practice at Tamworth.

## 2) Member Involvement in the Planning Process

The suggestions in this paper raise most concern as they depart from our normal practice which has evolved over many years to deliver the speed and efficiency that we currently deliver and which work well.

The note refers to effective Member involvement helping them to better represent their constituents and enrich local democratic debate, but also advocates that Members should be involved in pre-application discussions. There are occasions when it is entirely appropriate for Members to be involved at the pre application stage and this already takes place in Tamworth through briefing papers to Planning Committee. However, circumstances will vary dependent on the wishes of the potential applicant and the specific proposals. Officers are concerned that by imposing a process which brings all pre-application proposals to Planning Committee that it will slow down the pre-app process, may put potential applicants off engaging with us and clog up Planning Committee business. Therefore, it is suggested that pre-application discussion with members only takes place through Planning Committee and where the potential applicant has asked for this to happen. Officers will recommend that potential applicants allow officers to seek views of Planning Committee when it is considered appropriate. In all instances where members become involved in pre application discussions they should be aware of potential pre determination issues. Therefore the recommended response is that locally set thresholds and procedures should be put in place by each Council.

Point 2 advocates at least 4 training sessions per year for all Planning Committee members, and that these should ideally be facilitated by an outside body and again this is inline with existing practice in Tamworth. Our local protocol for councillors and officers dealing with planning matters sets out sets out the training requirements. It requires Members dealing with planning issues to attend training sessions each year to receive guidance in relation to planning regulations and procedures and on declarations of personal or prejudicial interests. This training should include a balance of the following:-

- Organised visits to review permissions granted, with evaluation and lessons learned presented as a paper;
- Short (half day) sessions on special topics of interest or where overturns have indicated problems with planning policy;
- Special topic groups to consider difficult and challenging issues in depth;
- Formal training by internal and external speakers;
- Visits to other authorities who have received good inspection / audit feedback;
- Quick presentations by officers on hot topics, e.g. new legislation, white papers and there impact, followed by a brief question and answer session;
- Attendance at inquiries where officers have identified that there is something specific to learn which will benefit members.

The report of the Audit Commission 'Building in Quality' recommend that Councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision making, thereby strengthening public, confidence in the planning system, and can help with reviews of planning policies. Such reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Point 3 suggests that it would be appropriate for Members to undertake site visits to permitted developments to see their impact and use the knowledge to inform future decisions. This is covered in the training.

Point 4 suggests that committees should consider introducing a “right to reply” whereby committee members have the ability to question the applicant or objector/supporter to clarify points they have raised. It is suggested that this can help to reduce the need to defer an application or avoid determinations based on a misunderstanding. Officers consider that the committee procedure in Tamworth has evolved into a streamlined process that successfully balances the proper debate around proposals with the need for timely efficient decision making, and would therefore not support this proposal. Supporters, Objectors and local ward members all have opportunity to speak on applications. A “right to reply” would be difficult to manage and may lead to confusion on what is being applied for. It is therefore suggested that the GBSLEP omit this from the guidance notes.

The paper also suggests that Members should be informed of updates to legislation, policy or case law. This is agreed, and forms part of our current procedures.

Finally, this paper advocates that for larger schemes, applicants should engage with local Members prior to submitting a planning application. Whilst this may be appropriate, our current procedure for very significant schemes is to produce an early Issues Report, which ensures that committee Members are aware of the proposal and that they have an opportunity to comment prior to the application coming before them for determination. This ensures a consistent Member view from elected Members with an understanding of the planning considerations, and is a valuable input to the overall assessment of such proposals. It also removes any question of pre-determination as the process is managed in an open transparent manner through the Committee process. Officers would endorse maintaining this current process.

#### The Pre-Application Process

This note sets out the benefits of early engagement, setting out the potential to improve the efficiency and effectiveness of the planning application system for all parties, and the likelihood of achieving improved outcomes. The paper is welcomed and agreed.

#### Planning Obligations

The note sets out when it is appropriate to enter in to a legal agreement, and that it is best to seek early agreement on Heads of Terms, and to simplify such agreements as much as possible. It also suggests that LPA's within the LEP should consider some joint working to produce and maintain a library of “standard” draft planning obligations. Officers welcome the note, and have no objection to “shared” practice provided that it met with the approval and agreement of our legal advisors.

### **RESOURCE IMPLICATIONS**

This would not result in work other than that already contained within the service area budget.

### **LEGAL/RISK IMPLICATIONS BACKGROUND**

The Government expects local planning authorities to perform in an effective and efficient manner to accord with the requirements of the National Planning Policy Framework. In particular paragraph 186 and 187 require authorities to adopt a positive approach to that foster the delivery of sustainable development. Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social

and environmental conditions of the area. Failure to comply with this requirement could result in the Borough Council not meeting performance targets set by the Government with the consequence that they could become a standards authority and lose control of determining planning applications.

### **SUSTAINABILITY IMPLICATIONS**

If best practice, as advocated by the guidance notes, is not adopted sustainable development may not result

### **BACKGROUND INFORMATION**

None

### **REPORT AUTHOR**

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### **LIST OF BACKGROUND PAPERS**

None

### **APPENDICES**

Planning Guidance Note – Planning Conditions  
Planning Guidance Note – Member Involvement in the Planning Application Process  
Planning Guidance Note – The Pre-Application Process  
Planning Guidance Note – Planning Obligations

# Planning Guidance Note

## Planning Conditions

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### Policy Overview

Government guidance on the use of planning conditions is contained within the National Planning Policy Framework (NPPF) and the Planning Practice Guidance.

[Paragraph 206 of the NPPF](#) states planning conditions should only be imposed where they meet the following six tests:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

### The Benefits of Effective Planning Conditions

If used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development.

### Key Tasks for the Local Planning Authority to Ensure the Use of Effective Conditions

1. The following six tests are taken directly from the Government's on-line Planning Practice Guidance ([www.planningguidance.communities.gov.uk/](http://www.planningguidance.communities.gov.uk/)) and must be applied by the Local Authority in drawing up/approving conditions:
  - a. *A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms. If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.*
  - b. *A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation). Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).*
  - c. *It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature/impact of the development. A condition cannot be imposed to remedy a pre-existing problem or issue not created by the proposed development.*
  - d. *Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.*

- e. *A condition should be written in a way that makes it clear to the applicant and others what must be done to comply with it. Poorly worded conditions are those that do not clearly state what is required and when, must not be used.*
- f. *Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.*
2. Planning Officers should similarly question consultee requirements against the six tests - and if they do not meet the tests they should be omitted or reworded.
  3. At the pre-application stage there should be clear guidance regarding what information is required to ensure that the development can be implemented quickly and with the minimum of conditions.
  4. Conditions that require the resubmission and approval of details that have already been submitted as a part of the planning application are unlikely to pass the test of necessity and should not be applied. Prescriptive or compliance conditions should be preferred to restrictive conditions that require the submission and approval of further details.
  5. The format, content and structure of conditions should be discussed during the Application process and prior to the decision being made to minimise or avoid the use of restrictive and other conditions.
  6. For clarity, the Decision Notice should set out conditions in the following order:-
    - I. Pre-commencement of development (thus allowing works, demolition etc.)  
Contamination could be dealt with in this way. However, the condition may be structured for large schemes to enable development to be implemented in phases.
    - II. Pre-Commencement of Principal Supporting Infrastructure  
Details of drainage or highway works may typically fall within this section.
    - III. Pre-Commencement of Buildings and other Structures  
This could include details such as landscaping and external materials.
    - IV. Pre-Occupation of Building  
Details such as BREEAM compliance, travel plans etc.
    - V. Compliance Conditions, Post Completion  
This may include conditions that place restrictions on the occupancy of a building or the hours of use.

# **Planning Guidance Note**

## **Member Involvement in the Planning Application Process**

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### **Policy/ Legislative Overview**

The 2011 Localism Act makes it clear that it is proper for councillors to play an active part in local discussions, and that they should not be liable to legal challenge as a result.

### **The Benefits of Effective Member Involvement in the Planning Application Process**

The effective involvement of members in the planning application process helps them better represent their constituents and enrich local democratic debate. People can therefore elect their councillor confident in the knowledge that they will be able to act on the issues they care about and have campaigned on.

With regard to pre-application discussions, Members bring their local knowledge and expertise, along with an understanding of community views. Involving councillors can therefore help identify issues early on and reduce the likelihood that issues come to light for the first time at committee that may slow down the determination of an application or lead to its refusal.

The following key principles can help maximise the contribution that members can make to the planning application process

### **Key Tasks for Local Planning Authorities**

1. Planning Committee Members and the relevant ward members should be involved in pre-application discussions for any proposal that is likely to be presented to the Planning Committee for determination. The level of involvement should ensure that members are fully aware of any such proposals and their comments can be taken into account when the application is being prepared.
2. There should be at least four training sessions per year for all planning committee members to ensure that they are conversant with all relevant planning legislation, policies, case law and other relevant information. Training Sessions should ideally be facilitated by an outside body to ensure a fresh perspective is given on planning matters. This would also help ensure that interpretations of planning legislation and practice that are no longer up to date do not become entrenched. New members must receive training before they are able to sit on the planning committee. Such training could be organised on a regional wide basis to share costs and resources between the local planning authorities and ensure a level of consistency with the advice given.
3. Regular (for example, on an annual basis) site visits to recently permitted developments should be arranged for Planning Committee members and Officers to enable them to see first-hand their impact and then use this knowledge to inform future decisions. Such site visits do not necessarily need

to be within their own particular authority area, particularly if there are examples of good, innovative development outside their area.

4. Planning Committees should consider introducing a 'right to reply' whereby committee members have the ability to question the applicant or objector/ supporter to clarify points of fact that they have raised. This can help reduce the need to defer an application or avoid it being determined on the basis of a misunderstanding that could lead to future challenges or unnecessary appeals.
5. Planning Committee members should be issued with regular papers that update them on any relevant changes in legislation, policy or case law. Again, this could be done on a region wide basis to share costs and resources between the local planning authorities and ensure consistent advice given.

### **Key Task for Applicants**

1. When appropriate, for example on larger schemes or schemes that will be determined by the Planning Committee, applicants should engage properly with local members prior to submitting a planning application. This will ensure that when the application is determined members are fully aware of the proposal and their comments have been taken into account when the application was prepared.



# Planning Guidance Note

## The Pre-Application Process

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### Policy Overview

Government policy within the National Planning Policy Framework (NPPF) states that Local Planning Authorities (LPA) should approach decision-making in a positive way, they should look for solutions and not problems and that they should encourage applicants to engage with them through voluntary pre-application discussions. This obligation also extends to statutory planning consultees.

### What are the Benefits of an Effective Pre-Application Process?

Paragraph 188 of the NPPF states that:-

*“Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.”*

For the applicant / developer pre-application advice should enable the following:

1. To obtain as much information as possible about likely LPA requests such as technical requirements or Section 106 expectations and community issues. This is especially helpful in revealing potential costs and local concerns
2. To obtain an indication re whether a proposal is likely to be favourably received or not or whether there are extremely significant challenges to overcome. This is useful in aiding a developer to decide whether or not to continue to incur further costs on more supporting work and agent/ specialist fees. However the purpose of the Pre app process is not to (and cannot) pre judge an application
3. To establish a positive working relationship with the Local Planning Authority.
4. To help smaller builders/ developers avoid and resolve issues without the need for access to specialist professional expertise.

For the LPA it has the following benefits:

1. It identifies issues early on in the process which the developer can then address to enable the formal application process to be a more positive and a simpler / quicker process.
2. It can help avoid conflict further down the line with applications which really should not have been pursued or could have been presented in a more acceptable form.
3. It can provide the LPA with an indication of the scale and type of developer interest in a particular site.

### Key Tasks

In order to ensure that the pre-application process works as effectively as possible, applicants and the Local Planning Authority should adopt the following principles:-

#### Key Tasks for the Local Planning Authority

1. The planning application process should adopt a strong customer focus, where the client can expect a quality service. It should be welcoming – with an ‘open for business’ approach.
2. The pre-application procedure should form an essential and integral part of the ‘end to end’ planning application ‘pipeline’ designed to save time and cut red tape.

3. Larger and more complex applications should have access to an Application Panel comprising consultees and specialist staff where the progress towards submitting an application is steered by the case officer. This could either be a bespoke session for a specific project or a monthly 'speed dating' (surgery type) session where developers are able to meet the panel, by appointment, to discuss their schemes.
4. LPA's should encourage the use of Design Review Panels for sensitive schemes which can improve the output of planning applications, raise standards and add value.
5. Planning Officers should be clear about the positive approach to pre-application engagement and be fully aware of the protocol for achieving a customer focus, with terms of reference to explain the purpose of a pre-application advice and what to expect.
6. LPA's should provide a simple 'information service' on-line to provide easily accessible help on procedures; and contact points for key consultees, local authority departments and Planning Aid.

#### Key Tasks for the Applicant

7. Applicants should make use of the pre-application process if they wish to expedite the decision making process, particularly for more complex planning applications.
8. Applicants should ensure that the maximum amount of information is submitted at the pre-application stage in order to ensure that the LPA can offer well informed advice.
9. Applicants should ensure that all advice given at the pre-application stage is reflected in the resultant planning application and all necessary information is submitted to ensure that it can be validated and determined without the need for further information.

# Planning Guidance Note

## Planning Obligations

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### Policy Overview

The National Planning Policy Framework states that planning obligations should only be used when it is not possible to address unacceptable impacts through a planning condition and they should only be used when all the following tests are met:-

- It is necessary to make the development acceptable in planning terms;
- It is directly related to the development; and
- It is fairly and reasonably related in scale and kind to the development.

### The Benefits of Effective Planning Obligations

A simple and effective approach to delivering planning obligations ensures that the momentum created by improving the front end of the planning application process is maintained through to the end of the process when the decision notice is issued. The following key principles help to ensure that this can be achieved.

### Key Tasks for the Local Planning Authority

10. Pre-application discussions should identify likely areas of contribution that will be required, and explore the possibility of avoiding the need for a planning obligation by the use of compliance Conditions.
11. Following the conclusion of the 21 day consultation period or an agreed timescale and assuming there are no in-principle objections to the application, the planning officer should begin negotiations to agree the form and contents of the planning obligation in accordance with an agreed programme which includes a deadline for engrossment.
12. To reduce delays tripartite S106 Agreements should be avoided where possible. Instead, the planning obligation should either be between the applicant and the local planning authority or completed by the applicant alone (a unilateral undertaking).
13. Local Planning Authorities within the Greater Birmingham and Solihull LEP should consider working together to produce and maintain a library of 'standard' draft planning obligations. This should speed up the decision making process, ensure a consistent approach and save resources currently spent preparing new planning obligations for each individual planning application.

### Key Tasks for the Applicant

1. The applicant should submit a draft planning obligation with the planning application or at the least detailed Heads of Terms identifying anticipated parties, contributions in name if not actual figures and trigger dates for payments together with an agreement that commits the applicant to paying the costs of preparing the obligation.

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