

REPORT FOR DECISION

DECISION OF:	COUNCIL
DATE:	12 September 2012
SUBJECT:	Amendment of the Constitution to Change the Protocol for Site Visits as set out in the "Probity In Planning Code of Conduct"
REPORT FROM:	Council Solicitor
CONTACT OFFICER:	Jayne M Hammond – Assistant Director - Legal and Democratic Services (Council Solicitor)
TYPE OF DECISION:	COUNCIL DECISION
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	This report requests an amendment to the Constitution by amending Appendix 1 (Protocol for Site Visits) to the Probity in Planning Code of Conduct and to change the practice in respect of arranging site visits for Members.
OPTIONS & RECOMMENDED OPTION	<p>The recommendations are:</p> <ol style="list-style-type: none">1. that the Council amends the Constitution by replacing the current paragraph 16 and Appendix 1 in the Probity in Planning Code of Conduct with the draft paragraph 16 and Appendix 1 to the Probity in Planning Code of Conduct (attached at Appendix A); and2. that the Council delegates to the Assistant Director of Planning, Environmental and Regulatory Services and appropriate officers the authorisation to change the current practice and arrangements made for site visits, as well as any

	associated communications and working practices.
IMPLICATIONS:	
Corporate Aims/Policy Framework:	The report sets out changes to the Council's Constitution which require approval by Council. Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	There are no financial implications arising from this report
Statement by Executive Director of Resources:	There are no resource implications arising from this report
Equality/Diversity implications:	There are no identified negative implications arising from the recommendations
Considered by Monitoring Officer:	Yes
Wards Affected:	All
Scrutiny Interest:	

TRACKING/PROCESS

DIRECTOR: Deputy Chief Executive

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

1.1 Custom and practice has developed within the Council whereby site visits for the Planning Control Committee involve engagement with the applicant, objectors and supporters by Members. Therefore, the site visit is used, albeit perhaps unintentionally in most cases, as a "committee" outside of the formal committee proceedings.

- 1.2 Given developments in planning and related administrative law over the last few years, particularly in relation to the area of probity in planning decisions, it is concluded that if site visits were to continue in the current format, then this presents significant legal and other risks to the Council.
- 1.3 Due to the concerns raised, it is recommended by the Assistant Director – Legal and Democratic Services that the Constitution is formally amended in accordance with the attached draft and any consequential changes made to the Council’s operative and administrative process to be effected as soon as possible as a result.

2.0 PURPOSE OF SITE VISITS

- 2.1 The purpose of a site visit in relation to a particular planning application is to enable Members of the Planning Control Committee to see the physical attributes of the site in its setting. Members may also have identified to them features of a proposed development which are not necessarily capable of appreciation from the planning officer’s report and other available documentary material. Site visits should be used sparingly and where the proposed benefit is substantial. They need to be carefully organised to ensure that the purpose, format and conduct are clearly established and adhered to.
- 2.2 Engagement of persons that are neither appropriate Council officers or Members of the Planning Control Committee (PCC) on site visits has been a key factor in driving these proposed changes. The proposal is that the neighbours/objectors/supporters will, from when the proposed changes take effect, not be formally be written to, notified nor invited to site visits.
- 2.3 National guidance from the Local Government Association on probity in planning (May 2009) acknowledges that an inspection can be unaccompanied (i.e. without applicant and objectors) or accompanied and run along the strict lines of a Planning Inspector’s assessment as part of an appeal; i.e. strictly not allowing any arguments to be expressed on site. However, the same document does clearly state that site visits simply consisting of an inspection by a viewing committee, with officer assistance, is in most cases the most fair and equitable approach to take where probity in planning is concerned.
- 2.4 It should also be remembered that site visits by the Members of the PCC often entail entry onto private land and only properly authorised members of staff will have the legal right to enter without express permission. Albeit it would be unusual to decline entry to Members of the PCC due to decide an application, it should not be taken as confirmed that Members will have access to the site when proposing a site visit or, moreover for the purposes of this report, that members of the public will be permitted to enter private premises. Of course, inspection from public vantage points is always permissible and is often useful where access to the site is not possible, for whatever reason.
- 2.5 Members should also be mindful that access to a site may be impractical, limited, unsafe or even illegal outside of the formal site visit arrangements. Moreover, Members will not have the benefit of the

officers' explanation of the proposals where they do not attend the formal arranged site visit.

- 2.6 It should be noted for the avoidance of any doubt, that the position on arranged site visits should be contrasted with the position in part 10 of the Probity in Planning Code of Conduct, which relates to attendance at pre-application discussions, which is a separate matter. The proposed changes before Members relate to when an application has been made, the Committee Agenda is published and a formal site visit arranged prior to the PCC determining an application.

3.0 THE CONCERNS AND RISKS

- 3.1 It is, in the view of the Council Solicitor, unfair that applicants or objectors/supporters are currently given more time to address the Committee if an application has an associated site visit than if it has not. Introductions and invitations to speak are proposed to be removed from the current protocol.
- 3.2 A concern has been raised that some Members of the Council appear to be requesting site visits in order to engage with members of the public and; more often than not and in particular, objectors on site. This is of considerable concern to the Council Solicitor.
- 3.3 Members of the PCC will be aware, from the current Probity in Planning Code of Conduct in the Constitution, of issues concerning and surrounding lobbying, pre-determination and the appearance of bias. This has been reinforced during training and presentation updates. In the opinion of the Council Solicitor, in order to minimise the risk of costs and consequential effects of legal challenge and other complaints; and uphold the important probative value of decisions by the Members of the Committee, where site visits are concerned, the Constitution should be amended in accordance with the attached draft document.
- 3.4 The legal process of consultation on appropriate planning applications (which is the majority of types of applications) remains amongst the most transparent of all the Council's legal functions. Most types of planning applications legally require consultations with statutory bodies and require the public to be notified of the application in order to allow a period for people to make representations. It is felt that, in order to avoid any misunderstanding by all concerned, the site visit needs to be strictly for the Members of the Committee, guided by the appropriate officers, once the Committee Agenda has been published.
- 3.5 The site visit should not be seen as an opportunity for persons to approach the Members of the PCC and make further representations, such an opportunity having been established already through the process of formal legal consultation and any opportunity that may be had to speak for/against the application at PCC. Such a process is, in the view of the Council Solicitor, over-engagement by the Members of the Committee which carries legal risk that can and should be avoided.
- 3.6 Should the Council be minded **not** to agree the proposed changes, the position is that the Council may be exposed to a greater risk of formal

legal challenge than it otherwise needs to be, in the opinion of the Council Solicitor.

- 3.7 The Council will need to make any minor consequential changes to its communications and operations in the event that the Council is minded to approve the attached proposed changes to the proposed part of the Constitution.

4.0 CONCLUSION AND RECOMMENDATION

- 4.1 Consequently, it is advisable that the current practice and protocol should be amended. As the protocol is part of the Constitution, Council is recommended to amend the Constitution as appropriate and to make any proposed minor changes to communications and working practices relating to site visits.

List of Background Papers:-

Local Government Association: *Probity in Planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters* (May 2009)

Bury Council Constitution: Probity in Planning Code of Conduct (page 269 of the current Constitution)

Contact Details:-

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