

## CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM**

**REPORT TO CABINET**

**17 FEBRUARY 2011**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

### **CABINET DECISION /COUNCIL**

**Regeneration and Transport – Lead Cabinet Member – Councillor Cook**

### **PROTOCOL ON DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

1. Summary

As Members will be aware the Government has set out an agenda for the delivery of a planning service appropriate for the 21<sup>st</sup> century through the Planning and Compulsory Purchase Act 2004, the Barker Review of Land Use Planning, and laterally, the White Paper-Planning for Sustainable Futures. The delivery of an expedient customer responsive service plays an important part in CPA rankings and in attracting financial income through the award of Planning Delivery Grant (PDG).

The performance of the Planning Committee has been under review for some time and in an attempt to improve decision making, particularly relating to the procedures associated with those decisions made contrary to officer recommendations, a new procedure had been identified which was designed to give an opportunity for further consideration, by officers and Members, and to reduce the risk both in terms of reputation and potential costs. Following reports to Cabinet and Full Council on 15<sup>th</sup> October 2008 and 26<sup>th</sup> October 2008, a protocol was agreed by Full Council that could be invoked in instances where Members were wanting to determine an application contrary to officer recommendation to defer the decision notice for three weeks whilst officers examine the reasons for refusal or acceptance against Planning Officers' advice were examined.

However the protocol was accepted subject to a review 12 months after implementing the changes. The review to be undertaken by the Head of Planning and the Planning Committee in consultation with the Cabinet Member for Regeneration and Transport. The findings and any subsequent recommendations were to be reported to Cabinet and acted upon within a timeframe agreed by Cabinet and Planning Committee

The Protocol has been considered again by the Planning Committee on 17<sup>th</sup> November 2010 and has been supported

2. Recommendations

That the continuation of the Protocol be approved

3. Reasons for the Recommendations/Decision(s)

This report is presented to Cabinet to comply with the findings of the Peer Report and the Service Improvement Plan in order to make a more streamlined and efficient service, consistent with the ambition and aspiration of excellence embedded into Stockton on Tees Borough Council.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

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**PROTOCOL ON DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

**SUMMARY**

As Members will be aware the Government has set out an agenda for the delivery of a planning service appropriate for the 21<sup>st</sup> century through the Planning and Compulsory Purchase Act 2004, the Barker Review of Land Use Planning, and laterally, the White Paper-Planning for Sustainable Futures. The delivery of an expedient customer responsive service played an important part in CPA rankings and in attracting financial income through the award of Planning Delivery Grant (PDG).

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However the protocol was accepted subject to a review 12 months after implementing the changes. The review to be undertaken by the Head of Planning and the Planning Committee in consultation with the Cabinet Member for Regeneration and Transport. The findings and any subsequent recommendations were to be reported to Cabinet and acted upon within a timeframe agreed by Cabinet and Planning Committee

The Protocol has been considered again by the Planning Committee on 17<sup>th</sup> November 2010 and has been supported with a recommendation that the protocol be approved.

**RECOMMENDATIONS**

That the continuation of the Protocol be approved

**DETAIL**

**PROTOCOL ON DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

1. Clearly, it is perfectly acceptable for Members to appropriately challenge officer recommendations and there are often subjective assessments on issues of design. However, the crux of the matter remains that if Members wish to make a decision against officer recommendation there has to be justifiable planning grounds to do so that can be evidenced.

2. The Protocol on decisions contrary to officer recommendation was introduced to give an opportunity for Members to try a new approach to decision making which allowed time for further consideration of those decisions where officers determine that there are insufficient planning grounds, or evidence, to support the Planning Committees decision.
3. As Members will recall the Protocol is involved following consideration of a planning application and a full debate by Members and officers. The committee will be asked to make a decision based on the evidence placed before them. In exceptional circumstances if the committee is still minded to approve or refuse the application contrary to officer recommendation and contrary to the advice of the Head of Legal Services that the reasons provided appear unreasonable or unsustainable on appeal, the decision must be either 'minded to approve to minded to refuse the application'.
4. Following the meeting, Planning and Legal officers in consultation with the Corporate Director of Development and Neighbourhood Services and/or the Director of Law and Democracy will further investigate issues raised and whether the conditions/reasons are reasonable and sustainable. If it considered that they are, the decision notice will be issued accordingly. If not, the Planning Committee members will be notified, giving them an opportunity to substantiate their reasons for the interim decision and seek further information as they deem appropriate prior to the application being considered at the next Planning Committee meeting who will make a final determination.
5. Since the Protocol was agreed there have been three occasions when it has been invoked:-
 

Planning Committee 10<sup>th</sup> June 2009  
09/0878/ADV  
Trinity Green, Holy Trinity Church  
Application for consent to display banners 2m long x .8m wide on 18 no. lamp posts within the grounds of Holy Trinity Church  
Planning Committee Decisions 1<sup>st</sup> July 2009 approved as report

Planning Committee 23<sup>rd</sup> September 2009  
09/1752/FUL  
High Tree Paddock High Lane Maltby  
Permanent retention of static caravan (Gypsy)  
Planning Committee 4<sup>th</sup> November 2009 approved as report

Planning Committee 15<sup>th</sup> September 2010  
10/1778/FUL  
Land North Of Blair Avenue, Ingleby Barwick  
Part retrospective application for mixed use development comprising 81 no. bedroom residential care home, 2 no. sheltered accommodation units containing 24 no. apartments and associated access, parking and landscaping.  
Planning Committee 6<sup>th</sup> October 2010 refused on grounds of overdevelopment, deficient in amenity space and does not result in good design.
6. It is considered that the protocol has not removed or diluted the democratic rights of committee members to determine a decision as they think fit but allows further time for consideration, reflection and investigation.
7. The Cabinet Member for Regeneration and Transportation Councillor Cook and the Planning Committee supports the continuation of the Protocol
8. It is recommended that the continuation of the Protocol be approved

## **CONCLUSION**

9. The overall package of measures has led to significant improvements to the speed of the service and its accessibility by members of the public. There have undoubtedly been some difficulties, but Members will recognise the continuing need to maintain improved performance, and it is recommended that the continuation of the Protocol will lead to a more streamlined and efficient service.

## **FINANCIAL AND LEGAL IMPLICATIONS**

10. There is a cost to the authority in terms of loss of reputation, but there is a financial cost to hiring consultants to defend the decisions of the Local Planning Authority and the resultant costs that could be awarded against the Council for unreasonable conduct and the unnecessary burden placed upon the appellants because of this. These costs could potentially be significant, and would need addressing through the medium term financial plan.

## **RISK ASSESSMENT**

11. The suggested reforms are categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

## **SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS**

12. Planning policy is part of the framework which enables the Community Strategy to be implemented and development services the physical manner in which it is delivered. Economic Regeneration Objective 6 'Ensure good and sustainable design in regeneration schemes and new developments-Meet government targets in determining planning applications' is relevant to this report.

## **COMMUNITY SAFETY**

13. The proposal has no direct impact upon community safety.

## **EQUALITIES IMPACT ASSESSMENT**

14. This report is not subject to an Equality Impact Assessment because it is a procedure which is universally applied regarding processes within Planning Services.

## **CONSULTATION INCLUDING WARD/COUNCILLORS**

15. The Protocol has been considered again by the Planning Committee on 17<sup>th</sup> November 2010 and has been supported with a recommendation that the protocol be approved.

### **Corporate Director, Development and Neighbourhood Services**

**Name of Contact Officer: Carol Straughan**

**Post Title: Head of Planning**

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Education related? **No**

Background Papers

Report to Planning Committee 17<sup>th</sup> November 2010

Ward(s) and Ward Councillors: **All**