



## Strategic Applications Sub Committee

<b>Date:</b>	<b>Tuesday, 22 December 2020</b>
<b>Time:</b>	<b>6.00 p.m.</b>
<b>Venue:</b>	<b>Virtual</b>

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### AGENDA

**1. APOLOGIES**

**2. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members are asked to consider whether they have any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

**3. APPOINTMENT OF VICE-CHAIR**

To receive nominations for the role of Vice-Chair to the Strategic Applications Sub Committee.

**4. PROTOCOL FOR PRE-APPLICATION AND PRE-DECISION MEMBER ENGAGEMENT BRIEFINGS (Pages 1 - 10)**

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## STRATEGIC APPLICATIONS SUB-COMMITTEE

22 DECEMBER 2020

<b>REPORT TITLE:</b>	<b>PROTOCOL FOR PRE-APPLICATION AND PRE-DECISION MEMBER ENGAGEMENT BRIEFINGS</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF LAW AND GOVERNANCE</b>

### REPORT SUMMARY

The purpose of this report is to enable the Strategic Applications Sub-Committee to note its Terms of Reference and to agree a Protocol for Pre-application and Pre-decision Member Engagement Briefings

This matter affects all Wards within the Borough.

This is not a Key Decision.

### RECOMMENDATIONS

It is recommended that the Strategic Applications Sub-Committee:

- (1) notes the Terms of Reference of the Sub-Committee as approved by Council together with the matters agreed by Planning Committee on 15 October 2020; and
- (2) approves the Protocol for Pre-application and Pre-decision Member Engagement Briefings

### SUPPORTING INFORMATION

#### 1.0 REASONS FOR RECOMMENDATION

- 1.1 To enable the Sub-Committee to decide upon how to best discharge its responsibility to carry out informal pre-application discussions with developers in relation to any matter which potentially may come before the Sub-Committee for a later decision.

#### 2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Sub-Committee could decide to consider informal pre-application discussions as part of a formal meeting of the Sub-Committee, albeit as part of an exempt/confidential agenda item. This is not recommended as it could run contrary to the notion of the discussions being held on an informal basis.
- 2.2 The informal meetings could take place in the context of a formal Working Group. That would require the agreement of Planning Committee and whilst such a step is

constitutionally perfectly feasible, it is considered satisfactory to arrange for the Sub-Committee to sit informally for the purpose of the developer engagement briefings.

### **3.0 BACKGROUND INFORMATION**

- 3.1 On 15 October 2020 Planning Committee resolved, amongst other matters, to reserve some matters to itself which otherwise would fall within the Terms of Reference of the Strategic Applications Sub-Committee, and that the Sub Committee be delegated the consideration of the protocols and procedures to be adopted with regard to pre application discussion arrangements.
- 3.2 The draft Protocol for Pre-application and Pre-decision Member Engagement Briefing is attached to this report (as Appendix 1) for consideration and approval. The purpose of the Protocol is to outline the process for developer engagement with members of the Strategic Applications Sub-Committee at the pre-application and pre-decision stages of the planning application process.
- 3.3 This process is solely for the following types of development proposals:
- I. Large-scale major developments - 200 houses or more or 10,000 square metres of non-residential floor space (which, by their nature, (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance.
  - II. Significant applications by Wirral Borough Council to develop any land owned by the Council for development of any land by the Council or by the Council jointly with any other person.
  - III. Development which would be a significant departure from the development plan (with the exception of domestic extensions).
  - IV. Decisions that would need to be referred to the Secretary of State, with the exception of applications for Planning Permission and/or Listed Building Consent to Grade I listed buildings, where there are no objections on conservation grounds.
- 3.4 The involvement of members in the pre-application and application process is recognised as best practice in the National Planning Policy Framework and is encouraged by the Planning Advisory Service and the Planning Officers Society who have both published guidance in this regard.
- 3.5 The Ministry of Housing Communities and Local Government states in the National Planning Policy Framework that,
- “Democratically elected members are strongly encouraged to participate at the pre-application stage, where it is appropriate and beneficial for them to do so. Section 25 of the Localism Act 2011 confirms that elected members do not have a ‘closed mind’ just because they have historically indicated a view on a matter relevant to the proposal.”
- 3.6 It is important that the process and procedures relating to member involvement in pre-application and pre-decision discussions on planning applications are clearly understood by officers, members and the public and that such discussions are subject

to good governance. The protocol sets out the governance for such discussions as are applicable for Wirral Borough Council .

- 3.7 The pre-application and pre-decision discussion between the Sub-Committee and the developer will be in the form of an informal briefing which may be instigated by a developer or a planning officer. The applicant will be able to give a presentation of the proposal and the members will have the opportunity to ask questions and seek clarification on the details of a proposal. However, the meeting will not enter into detailed negotiations with regard to any proposed application and such negotiations should be left to discussions between the applicant and the planning officers
- 3.8 These informal briefings will not be a formal meeting of the Strategic Applications Sub-Committee. Attendees at the meeting will be limited to the following:
- a. Members of the Sub-Committee;
  - b. Officers – planning, legal and committee administration; and
  - c. The developer and agents
- 3.9 It should be noted that in addition to these informal private briefings to the Sub-Committee the developer / applicant will be strongly encouraged to undertake appropriate pre-application consultation with the public in accordance with the requirements of the Council’s Statement of Community Involvement. A copy of this Protocol will be put onto the Councils website
- 3.10 The Committee is recommended to approve the Protocol for Pre-application and Pre-decision Member Engagement Briefing and to note the terms of reference of the Sub-Committee together with the determination of the Planning Committee on 15 October 2020 with regards to those terms of reference.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 There are no direct financial implications arising from this report.

#### **5.0 LEGAL IMPLICATIONS**

- 5.1 The Constitution, as approved by Council, provides for a Strategic Applications Sub-Committee with the following Terms of Reference:

*Strategic Applications Sub-Committee*

*A Sub-Committee of between six (6) and nine (9) members of the Planning Committee, politically balanced, with responsibility for making decisions regarding:*

*(a) the implications of major developments outside of the Borough that could have an impact on local residents; and*

*(b) the following categories of applications for planning permission:*

*(i) large-scale major developments (defined by the Ministry for Housing, Communities and Local Government (MHCLG) as those of 200 houses or*

*more or 10,000 square metres of non-residential floor space) which, by their nature, (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance;*

*(ii) planning applications for mineral extraction or waste disposal, other than small scale works which are ancillary to an existing mineral working or waste disposal facility;*

*(iii) significant applications by Wirral Borough Council to develop any land owned by the Council, or for development of any land by the Council or by the Council jointly with any other person (Regulation 3 applications)*

*(iii) applications which, if approved, would represent a significant departure from the policies of the statutory development plan, where they are recommended for approval;*

*(iv) any application where the Director responsible for the planning service considers it inappropriate to exercise delegated powers having regard to the public representations received and consultee responses; and*

*(c) consideration of documents relating to the Local Development Framework and advise the Economy, Regeneration and Development Committee (or Housing Committee) where appropriate.*

5.2 On 15 October 2020 the Planning Committee agreed as follows:

*(1) That the Terms of Reference of the Strategic Applications Sub-Committee.....be noted and those matters delegated to it be reserved to Planning Committee except as set out in paragraph 6 of this resolution.*

*(2) That the Strategic Applications Sub Committee be delegated the consideration of the protocols and procedures to be adopted with regard to pre application discussion arrangements.*

*(3) That the size of the Strategic Applications Sub-Committee, having regard to the options referred to at paragraph 5.5 of the report be set at 6 members of the Planning Committee in the political ratio of 3 Labour Seats (with 2 substitutes), 2 Conservative seats (with one substitute) and 1 Liberal Democrat seat (with 1 substitute).*

*(4) That the Chair of Planning Committee to be appointed as Chair of the Strategic Applications Sub Committee.*

*(5) That the Monitoring Officer be authorised as proper officer to carry out the wishes of the Group Leaders in allocating Members to membership and substitute membership of the Strategic Applications Sub-Committee and to appoint those*

*Members with effect from the date at which the proper officer is advised of the names of such Members*

*(6) That the following matters shall be determined at the Strategic Applications Sub Committee:*

*(i) Large-scale major developments (defined by the Ministry for Housing, Communities and Local Government (MHCLG) as those of 200 houses or more or 10,000 square metres of non-residential floor space) which, by their nature, (e.g. scale, location etc) have wider strategic implications and raise issues of more than local importance.*

*(ii) significant applications by Wirral Borough Council to develop any land owned by the Council, or for development of any land by the Council or by the Council jointly with any other person (Regulation 3 applications)*

*(iii) Applications where it was proposed to make a decision that is a significant departure from the policies of the development plan, with the exception of domestic extensions.*

*(iv) Decisions that would need to be referred to the Secretary of State with the exception of applications for Planning Permission and/or Listed Building Consent to Grade I listed buildings, where there are no objections on conservation grounds.*

*(v) informal pre-application discussions with developers in relation to any matter which potentially may come before the Sub-Committee for later decision.*

5.3 The establishment of the Local Plan Steering Sub-Committee is in compliance with the Council's Constitution.

5.4 The Pre-application and Pre-decision Member Engagement Briefing, as recommended, are informal briefings for members of the Strategic Applications Sub-Committee and will not meet in public session and are not subject to the Access to Information Procedure Rules.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

6.1 There may be minor implications in terms of staffing time setting up and attending Sub-Committee meetings, which can be managed within current resources.

## **7.0 RELEVANT RISKS**

7.1 The Planning Advisory Service advise that the active involvement of members at the earliest stages of a development project is important to improving the quality of the development scheme and reducing potential delays in decision making. Failure to establish a protocol enabling such involvement of members would have a detrimental impact on effective decision making and sound governance with regard to the determination of major planning applications.

## **8.0 ENGAGEMENT/CONSULTATION**

8.1 Members of the Sub-Committee have been consulted on the proposals in this report.

## **9.0 EQUALITY IMPLICATIONS**

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. There are no equality implications arising from the proposals within this report.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

10.1 The recommendations contained within this report are expected to have no impact on emissions of Greenhouse Gases.

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## **APPENDICES**

Appendix 1- Draft Protocol for Pre-application and Pre-decision Member Engagement Briefing

## **BACKGROUND PAPERS**

Wirral Council Constitution

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Council Meeting Date 28 September 2020</b>	
<b>Planning Committee 15 October 2020</b>	

## **Appendix 1- Protocol for Pre-application and Pre-decision Member Engagement Briefing**

### **1. Purpose**

The purpose of this protocol is to outline the process for developer engagement with members of the Strategic Applications Sub-Committee at the pre-application and pre-decision stages of the planning application process.

This process is solely for the following types of development proposals:

- (i) Large-scale major developments - 200 houses or more or 10,000 square metres of non-residential floor space (which, by their nature, (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance.
- (ii) Significant applications by Wirral Borough Council to develop any land owned by the Council for development of any land by the Council or by the Council jointly with any other person.
- (iii) Development which would be a significant departure from the development plan (with the exception of domestic extensions).
- (iv) Decisions that would need to be referred to the Secretary of State with the exception of applications for Planning Permission and/or Listed Building Consent to Grade I listed buildings, where there are no objections on conservation grounds.

The involvement of members in the pre-application and application process is recognised as best practice in the National Planning Policy Framework and is encouraged by the Planning Advisory Service and the Planning Officers Society who have both published guidance in this regard.

The Ministry of Housing Communities and Local Government states in the National Planning Policy Framework that that,

“Democratically elected members are strongly encouraged to participate at the pre-application stage, where it is appropriate and beneficial for them to do so. Section 25 of the Localism Act 2011 confirms that elected members do not have a ‘closed mind’ just because they have historically indicated a view on a matter relevant to the proposal.”

It is important that the process and procedures relating to member involvement in pre-application and pre-decision discussions on planning applications are clearly understood by officers, members and the public and that such discussions are subject to good governance. This protocol sets out the governance for such discussions as are applicable for Wirral Borough Council

### **2. The Benefits of Pre-application and Pre-decision Member Engagement**

The Planning Advisory Service advise that the active involvement of members at the earliest stages of a development project is important to improving the quality of the development scheme and reducing potential delays in decision making.

The Benefits are:

- I. Members take decisions on planning applications, balancing their community leadership role with the need to keep an open mind prior to decision making. However, this does not mean that members should be insulated from early discussions with developers. Pre-application discussions will help to bring about better understanding of the issues relating to major applications through open exchange of information, discussion and constructive questioning.

- II. Early and pro-active engagement in pre-application discussions with the members of the Strategic Applications Sub-Committee will help developers to shape major schemes before they are significantly advanced.
- III. Members have the opportunity to ensure that proposed new development meets the wider spatial aspirations of the Council.
- IV. The Chair and members of the Sub-Committee can use their position as local leaders to aid important developments that will realise their aspirations for the area.
- V. Members of the Sub-Committee have an invaluable opportunity to understand issues of viability and to explore potential contributions to local infrastructure and affordable housing (within the constraints of national guidance on such matters).
- VI. The Council is working to ensure that their economic development, regeneration and planning services operate in close alignment. As part of this the Council is signposting a 'front door' whereby potential applicants for new strategic developments are encouraged to approach the Council at the very earliest stages to discuss concept proposals with planning members. This initial contact will establish good relations for the rest of the project or may avoid costly delays in taking forward proposals that have little chance of success or community support. Discussions may start with a blank sheet of paper to allow options to be explored openly or may build on proposals that are at an early stage of development. While these discussions are preliminary, it is nonetheless important that a record of any discussions are made, shared between the participants, and kept on record should an application follow.

### **3. Probity**

The Local Government Association with the Planning Advisory Service published "Probity in Planning" in December 2019 which provides clear advice on early engagement with applicants and pre-application discussions. This encourages early councillor engagement to ensure that proposals for sustainable development will lead to settlements that communities need. It reinforces the benefits outlined above of pre-application discussions between a potential applicant and the Council that can benefit both parties.

However, it also warns that it would be easy for such discussions to become or be seen by third parties to become, part of a lobbying process on the part of the applicant. A decision taker must not have made up their mind on a proposal such that they have a closed mind to any new information or alternative views before taking a decision. But it is acceptable for a councillor to be predisposed to support or object to a proposal as a result of both their community representative and leadership roles.

### **4. Governance**

The pre-application and pre-decision discussion between the Sub-Committee and the developer will be in the form of an informal briefing which may be instigated by a developer or a planning officer. The applicant will be able to give a presentation of the proposal and the members will have the opportunity to ask questions and seek clarification on the details of a proposal. However, the meeting will not enter into detailed negotiations with regards to any proposed application and such negotiations should be left to discussions between the applicant and the planning officers

These informal briefings will not be a formal meeting of the Strategic Applications Sub-Committee. Attendees at the meeting will be limited to the following:

- a. Members of the Sub-Committee
- b. Officers – planning, legal and committee administration
- c. The developer and agents

It should be noted that in addition to these informal private briefings to the Sub-Committee, the developer / applicant will be strongly encouraged to undertake appropriate pre-application consultation with the public in accordance with the requirements of the Council's Statement of Community Involvement.

#### **5. Member Engagement Process**

1. In order to initiate the process, the applicant should write to or email the Chief Planning Officer or Manager of Development Management. The Chief Planning Officer or Manager of Development Manager may suggest that to the developer that they enter into this process
2. The Officer, in consultation with the Sub-Committee Chair and Spokespersons will decide whether to enter into pre-application or pre-decision engagement.
3. The applicant will be informed within 7 working days of their request whether the request for pre-application or pre-decision engagement has been agreed.
4. If the request has been agreed, the applicant will be asked to submit relevant information including location plan and relevant plans plus supporting information outlining key issues as appropriate.
5. Once this information has been received the committee administrator will arrange the informal briefing, which may take place following a formal meeting of the Strategic Applications Sub-Committee or a separate date will be arranged. Members of the sub-committee will be invited and given a minimum of 5 working days.
6. The briefing will be led by the Sub-Committee Chair.
7. The Chair will introduce the purpose of the briefing and advise how it will be conducted. They will re-iterate that the purpose of the discussion is fact finding and for clarification of the main issues relating to the proposed development. They will remind members with regard to the need for probity and that members must not pre-determine any matter under discussion. A record of the outcome of the meeting will be made and such record may be subject to an application for disclosure under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.
8. The Chair will introduce members of the Sub-committee.
9. Officers will confirm that the discussions will not bind the Council to make a particular decision and that views/opinions expressed are made without prejudice to the future consideration of any application.
10. The applicant will present their proposal. This should include a strategy for future engagement with ward members and the local community.
11. The Planning Officers will be given the opportunity to provide comments and advise members of the planning issues/ policies that need to be considered.
12. Members will then have the opportunity to ask questions and seek clarification.
13. The committee administrator will make a record of the discussion. This note of the discussion will be placed on the application file at the earliest possible opportunity (taking account of the need for commercial confidentiality). The involvement of members in the briefing will be recorded in any subsequent committee report. A copy of the note will be sent to the applicant.

## **6. Conclusions**

There are clear benefits to the adoption of a protocol for early member engagement in the planning application process. Nevertheless, it is essential to ensure that members do not pre-determine the outcome of any planning application during this process.

Section 25 of the Localism Act 2011 clarifies that the probity rules which ensure councillors behave with the highest standards in relation to their role in planning are not a barrier to councillors being actively involved in bringing their local knowledge, expertise and understanding of community concerns to bear in the pre-application process

To safeguard against the risk of pre-determination by Planning members, or giving a perception of pre-determination, this protocol will be published on the Council's website and appropriate training has been provided for members and officers. A written record of the discussions will be made.