



<b>Title:</b>	<b>Constitution of the Council (Part 3H: Planning Committee)</b>
<b>Owner:</b>	<b>Angela Wakefield</b>
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**Adopted by Full Council on 18<sup>th</sup> May 2018**



## FUNCTIONS, PROCEDURES AND DELEGATIONS OF THE PLANNING COMMITTEE

### 1 FUNCTIONS OF THE PLANNING COMMITTEE

#### ONLY FULL COUNCIL CAN AMEND THE FUNCTIONS OF THE PLANNING COMMITTEE

- 1.1 The following powers and functions are the responsibility of the Planning Committee (in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended):

	<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
1.1.1	Power to determine application for planning permission.	SS.70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990.
1.1.2	Power to determine applications to develop land without compliance with conditions previously attached.	S.73 of the Town and Country Planning Act 1990.
1.1.3	Power to grant planning permission for development already carried out.	S.73A of the Town and Country Planning Act 1990.
1.1.4	Power to decline to determine application for planning permission.	S.70A of the Town and Country Planning Act 1990.
1.1.5	Duties relating to the making of determinations of planning applications.	SS.69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning (General Development Procedure) Order 1995 and directions made thereunder.

1.1.6	Power to determine application for planning permission made by a local authority, alone or jointly with another person.	S.316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992.
1.1.7	Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.
1.1.8	Power to enter into agreement regulating development or use of land.	S.106 of the Town and Country Planning Act 1990.
1.1.9	Power to issue a certificate of existing or proposed lawful use or development.	SS.191(4) and 192(2) of the Town and Country Planning Act 1990.
1.1.10	Power to serve a completion notice.	S.94(2) of the Town and Country Planning Act 1990.
1.1.11	Power to grant consent for the display of advertisements.	S.220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992.
1.1.12	Power to authorise entry onto land.	S.196A of the Town and Country Planning Act 1990.
1.1.13	Power to require the discontinuance of a use of land.	S.102 of the Town and Country Planning Act 1990.
1.1.14	Power to serve a planning contravention notice, breach of condition notice or stop notice.	SS.171C, 187A and 183(1) of the Town and Country Planning Act 1990.
1.1.15	Power to issue a temporary stop notice.	S.171E of the Town and Country Planning Act 1990.
1.1.16	Power to issue an enforcement notice.	S.172 of the Town and Country Planning Act 1990.
1.1.17	Power to apply for an injunction restraining a breach of planning control.	S.187B of the Town and Country Planning Act 1990.

1.1.18	Power to determine applications for hazardous substances consent, and related powers.	SS.9(1) and 10 of the Planning (Hazardous Substances) Act 1990.
1.1.19	Power to require proper maintenance of land.	S.215(1) of the Town and Country Planning Act 1990.
1.1.20	Power to determine application for listed building consent, and related powers.	SS.16(1) and (2), 17 and 33(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
1.1.21	Duties relating to applications for listed building consent.	SS.13(1) and 14(1) and (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 26 of Department of the Environment, Transport and the Regions Circular 01/01.
1.1.22	Power to serve a building preservation notice, and related powers.	SS.3(1) and 4(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
1.1.23	Power to issue enforcement notice in relation to demolition of listed building in conservation area.	S.38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
1.1.24	Powers to acquire a listed building in need of repair and to serve a repairs notice.	SS.47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
1.1.25	Power to apply for an injunction in relation to a listed building.	S.44A of the Planning (Listed Buildings and Conservation Areas) Act 1990.
1.1.26	Power to execute urgent works.	S.54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
1.1.27	Power to create footpath, bridleway or restricted byway by agreement.	S. 25 of the Highways Act 1980.

1.1.28	Power to create footpaths, bridleways and restricted byways.	S. 26 of the Highways Act 1980.
1.1.29	Power to stop up footpaths, bridleways and restricted byways.	S. 118 of the Highways Act 1980.
1.1.30	Power to determine application for public path extinguishment order.	SS. 118ZA and 118C(2) of the Highways Act 1980.
1.1.31	Power to make a rail crossing extinguishment order.	S. 118A of the Highways Act 1980.
1.1.32	Power to make a special extinguishment order.	S. 118B of the Highways Act 1980.
1.1.33	Power to divert footpaths, bridleways and restricted byways.	S. 119 of the Highways Act 1980.
1.1.34	Power to make a public path diversion order.	SS. 119ZA and 119C(4) of the Highways Act 1980.
1.1.35	Power to make a rail crossing diversion order.	S. 119A of the Highways Act 1980.
1.1.36	Power to make a special diversion order.	S. 119B of the Highways Act 1980.
1.1.37	Power to require applicant for order to enter into agreement.	S. 119C(3) of the Highways Act 1980.
1.1.38	Power to make an SSSI diversion order.	S. 119D of the Highways Act 1980.
1.1.39	Duty to keep register with respect to applications under SS. 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.	S. 121B of the Highways Act 1980.
1.1.40	Power to decline to determine certain applications.	S. 121C of the Highways Act 1980.
1.1.41	Duty to assert and protect the rights of the public to use and enjoyment of highways.	S. 130 of the Highways Act 1980.

1.1.42	Duty to serve notice of proposed action in relation to obstruction.	S. 130A of the Highways Act 1980.
1.1.43	Power to apply for variation of order under S. 130B of the Highways Act 1980.	S. 130B(7) of the Highways Act 1980.
1.1.44	Power to authorise temporary disturbance of surface of footpath, bridleway or restricted byway.	S. 135 of the Highways Act 1980.
1.1.45	Power temporarily to divert footpath, bridleway or restricted byway.	S. 135A of the Highways Act 1980.
1.1.46	Functions relating to the making good of damage and the removal of obstructions.	S. 135B of the Highways Act 1980.
1.1.47	Powers relating to the removal of things so deposited on highways as to be a nuisance.	S. 149 of the Highways Act 1980.
1.1.48	Power to extinguish certain public rights of way.	S. 32 of the Acquisition of Land Act 1981.
1.1.49	Power to extinguish public right of way over land acquired for clearance.	S. 294 of the Housing Act 1981.
1.1.50	Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway.	S. 257 of the Town and Country Planning Act 1990.
1.1.51	Power to extinguish public rights of way over land held for planning purposes.	S. 258 of the Town and Country Planning Act 1990.
1.1.52	Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997.
1.1.53	Powers relating to the preservation of trees.	SS. 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999.
1.1.54	Powers relating to complaints about high hedges.	Part 8 of the Anti-Social Behaviour Act 2003.

1.1.55	Power to apply for an enforcement order against unlawful works on common land.	S. 41 of the Commons Act 2006.
1.1.56	Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference.	S. 45(2)(a) of the Commons Act 2006.
1.1.57	Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town or village greens.	S. 45(2)(b) of the Commons Act 2006.
1.1.58	Determining whether a charge should be made for any approval, consent, licence, permit or registration the issue of which is the responsibility of the Planning Committee and, if so, the amount of such charge.	Reg. 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

- 1.2 The Planning Committee may be consulted on other matters relating to Planning policy or procedure.
- 1.3 The Planning Committee may delegate any of these powers or functions fully or partly to any officer of the Council.

## 2 PROCEDURES OF THE PLANNING COMMITTEE

THE PLANNING COMMITTEE CAN AMEND THE PROCEDURES WHICH IT FOLLOWS

### MEMBERSHIP

- 2.1 Membership will be a total of 15 to reflect the political make-up of the Council.



## MEETINGS

- 2.2 All meetings of the Committee shall be held at the Town Hall Burton upon Trent at 2.00pm unless previously agreed by the Committee.
- 2.3 The Committee will meet so often as may be required to perform the functions of the Committee. Ordinarily the Committee meets monthly.

## CHAIRMAN AND VICE-CHAIRMAN

- 2.4 The Council shall appoint the Chairman and the Committee shall appoint the Vice-Chairman.

## RIGHT TO ATTEND

- 2.5 Meetings of the Committee shall be open to the press and public except for confidential business.
- 2.6 All Councillors formally appointed to the Committee by the Council have the right to attend and to vote at meetings of the Committee, except that only Councillors who have attended any relevant site visit may vote on a particular planning application (other members of the Committee who have not attended any relevant site visit may speak on the application but not vote).
- 2.7 Ward Councillors may attend and, when invited to do so by the Chairman, address the Committee for up to 3 minutes. They may also ask the Chairman for consent to speak during the debate (giving reasons). The Chairman may seek the views of the Committee before making a decision. If the Chairman gives such consent, the Councillor may take part in the debate when invited to do so by the Chairman (but may not vote).
- 2.8 Other Councillors who are not formal members of the Committee may attend meetings of the Committee, except where Exempt Information is likely to be disclosed. If Exempt Information is likely to be disclosed, they can only attend such meetings if they can demonstrate that their attendance is necessary to perform their duties as a Councillor. If they do attend, they may ask the Chairman for consent to speak (giving reasons). The Chairman may seek the views of the Committee before making a decision. If the Chairman gives such consent, the Councillor may take part in the debate when invited to do so by the Chairman (but may not vote).

## QUORUM

2.9 A quorum shall be no less than 6 Councillors.

## QUASI-JUDICIAL HEARINGS

2.10 Where the Committee is sitting to conduct a hearing of a quasi-judicial nature, the Committee shall follow a procedure for such hearings that complies with the European Convention on Human Rights and the rules of natural justice.

## PUBLIC SPEAKING

2.11 The Chairman shall allow members of the public, agents, applicants and Parish Councillors/Clerks to address the Committee in accordance with the public speaking guidelines.

2.12 If the Chairman decides that it is likely to help the proper conduct of the business, they may ask any person present at a Meeting questions in order to ascertain facts associated with the decision to be taken. If they do, that person may answer the question (in which case they must confine their answer solely to the question asked) or decline to answer the question.

## REPORTING ARRANGEMENTS

2.13 Where necessary the Committee will make reports and recommendations to the Executive and/or Full Council arising from the outcome of their work.

## APPLICATION OF COUNCIL MEETING PROCEDURE RULES

2.14 Save where inconsistent with these Rules, proceedings at the Committee will be governed as set out in Rule 23 of the Council Meeting Procedure Rules – see Part 3A.

### 3 GUIDELINES FOR SITE VISITS

#### THE PLANNING COMMITTEE CAN AMEND THE PROCEDURES WHICH IT FOLLOWS

- 3.1 The aim of a site visit is to provide Members of the Planning Committee with the opportunity to assess the merits of a proposal by visiting and inspecting the site and taking into account all relevant planning matters relating to the proposal, in advance of the proposal being discussed in full at the meeting of the Committee.

#### HOLDING SITE VISITS

- 3.2 Site visits will not be required in every instance. Where site visits are deemed necessary the members of the Planning Committee will be given the opportunity to assess the merits of a proposed application by visiting and inspecting the site and taking into account all relevant planning matters relating to the proposal, in advance of the proposal being discussed in full at the meeting of the Committee.
- 3.3 A Ward Councillor may request a site visit. However, the decision as to whether a site visit is deemed necessary shall rest with Sal Khan or the Planning Manager, or any officer authorised by them, in consultation with the Chairman of the Planning Committee who together must consider whether the application is:
- 3.3.1 deemed of significant public interest; and/or
  - 3.3.2 sufficiently complex to require a site visit (for example landmark developments involving fundamental changes to the street scene).
- 3.4 Where a site visit is requested by a Ward Councillor the request shall be made in writing and within 21 days of the publication of the weekly list of. Such requests shall give a reasoned justification for the proposed site visit. When a Ward Councillor requests a Site Visit and this request is declined, the Ward Councillor shall be given a reason for such decision.

## ROLE OF COUNCILLORS

- 3.5 The Chairman shall ensure that members of the Planning Committee inspect the site as a group. They must ensure that they see or inspect all relevant matters so they can fully assess the planning merits of the proposal.
- 3.6 The Officers may arrange for demonstration of use or clarification of dimensions, or materials used in buildings and operational details for the information of the Committee.
- 3.7 Councillors may ask questions, through the Chairman, of the applicant on the site.
- 3.8 Councillors should not enter into discussions of the merits of the proposal with the applicant or other Councillors during the site visit.
- 3.9 Councillors shall be seen to be perfectly scrupulous and fair to both the applicant and third parties at all site visits.
- 3.10 Councillors should not leave the site visit until the Chairman has indicated the site visit has ended.
- 3.11 Ward Councillors may address members of the Committee but their address must focus on site factors and site issues.

## ROLE OF THE CHAIRMAN

- 3.12 The Councillor chairing the site visit must ensure the site visit is run in a fair and orderly manner.
- 3.13 They must ensure all questions and comments are made through the Chairman.
- 3.14 They should be guided by advice from officers present but must ensure the site has been adequately inspected, which may include inspection from third party locations or elsewhere.
- 3.15 They must formally open and close the site visit and ensure Councillors are fully aware of matters arising at the visit.

## PERSONS INVITED TO ATTEND A SITE VISIT

- 3.16 The Council will normally only invite the following persons to attend a site visit:

- 3.16.1 Members of the Planning Committee;
- 3.16.2 The applicant and/or their agent;
- 3.16.3 Ward Councillors;
- 3.16.4 Officers of the Council and officers of statutory consultees where they are likely to have a valid technical input into the site visit.

## PROCEDURES

- 3.17 The meeting will commence at a publicly accessible location.
- 3.18 Officers will describe the proposal and may refer to matters raised in the report by consultees and third parties.
- 3.19 Councillors may ask questions, through the Chairman, of the officers about the proposals.
- 3.20 Councillors may ask questions, through the Chairman, of the applicant for clarification only.
- 3.21 The applicant and/or agent may not address the Councillors present about the merits of the case. If any such attempt is made, the Chairman, will warn the applicant and/or agent that Councillors cannot consider their comments.
- 3.22 The Committee should then, as a group led by the Chairman, inspect the site and any adjacent land. During this time Councillors may ask questions, through the Chairman, of the officers or the applicant for clarification only.
- 3.23 Once the site and any adjacent land has been inspected the Chairman should formally close the site visit.
- 3.24 Once closed no further discussions should take place.

## HOSPITALITY

- 3.25 Councillors and officers may not accept any form of hospitality from the applicant and/or agent.

## ACCESS

- 3.26 To assess the validity of a case, the Councillors, and the applicant and/or agent must be allowed adequate access to relevant locations.

3.27 If there is any constraint on access then a site visit should not be carried out.

## 4 GUIDELINES FOR PUBLIC SPEAKING

### THE PLANNING COMMITTEE CAN AMEND THE PROCEDURES WHICH IT FOLLOWS

#### PROCEDURES

- 4.1 The scheme for public speaking at Planning Committee only concerns matters relating to applications made under the Town and Country Planning Act 1990 and the Planning (Listed Building and Conservation Areas) Act 1990 (or any updated, amended or replacement legislation) and associated matters on the relevant Planning Committee agenda. It does not apply for legal and enforcement issues.
- 4.2 Any person who wishes to make oral representations to the Committee must notify the Democratic Services Team before 5pm on the Wednesday prior to the Committee Meeting. They should indicate if they wish to speak in favour of, or against the planning application.
- 4.3 Public speaking opportunities shall be allocated on a first come, first served basis. Where a number of people wish to speak they will be notified of the 'list' of potential participants on the Thursday prior to the committee meeting and given the opportunity to agree amongst themselves who will act as a spokesperson. If they cannot agree a spokesperson, the Chairman will ask people to speak in the order in which they notified the Democratic Services Team, up to the maximum number of speakers.
- 4.4 The maximum time allowed will be three minutes per speaker and each person can only speak once.
- 4.5 The Chairman will invite people to speak in the following order:
  - 4.5.1 A member or clerk of the parish/town council(s) for the area in which the application is located;
  - 4.5.2 A member of the public supporting the application;
  - 4.5.3 Two members of the public opposing the application;

- 4.5.4 The applicant or their agent.
- 4.6 A leaflet will be prepared giving details of the process for the public's information. This will be available at Council offices, and sent to anyone who has made, or commented on a planning application that is going to be presented at committee, with an invitation to attend and speak if they wish.
- 4.7 The leaflet will stress that the comments made should be relevant to planning issues such as residential amenity; loss of light or overshadowing; highway safety and traffic; noise; disturbance; smell; design; appearance; layout; character of the area; historic buildings; trees; and national or local planning policies.
- 4.8 It will state that they should not refer to non-planning issues such as private property rights (boundary or access disputes); the developer's morals or motives; loss of property value or loss of view; and matters covered by other laws (e.g. alcohol licence, building control).
- 4.9 It will also stress that at the meeting the speakers should not:
  - 4.9.1 make statements of a personal or slanderous nature which could result in legal action against them;
  - 4.9.2 be abusive;
  - 4.9.3 interrupt other speakers; or
  - 4.9.4 interrupt the committee debate.

## 5 DELEGATION TO OFFICERS

### THE PLANNING COMMITTEE CAN AMEND THE DELEGATION OF ITS FUNCTIONS TO OFFICERS

- 5.1 The powers and functions of the Planning Committee, as listed in the Council's Constitution and defined under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, may be discharged by Sal Khan or the Planning Manager or other officers authorised by them.

Provided that:

- 5.2 In the following circumstances Sal Khan or the Planning Manager, or, in their absence, any officer authorised by either of them, shall refer applications to the Planning Committee where:
- 5.2.1 a request is made by a Ward Councillor;
  - 5.2.2 the application is contrary to agreed local plan policy and its approval would represent a significant departure;
  - 5.2.3 the application is of significant public interest, and/or is believed to be controversial;
  - 5.2.4 any other circumstances in which Sal Khan or the Planning Manager considers it appropriate.
- 5.3 With regard to 5.2.1 any request shall be made in writing to Sal Khan or the Planning Manager and within 21 days of the publication of the weekly list of applications. Such requests shall give a reasoned justification for the application being considered at Committee rather than under delegated powers.
- 5.4 With regard to 5.2.3 above, any interpretation of “significant public interest” or “controversial” shall be made by the Chairman of the Committee, or, if they are unable to act, the Vice-Chairman.
- 5.5 In arriving at a view as to whether or not to refer an application to the Planning Committee in accordance with 5.2.4 above, Sal Khan or the Planning Manager will consult with the Chairman of the Committee (or, if they are unable to act, the Vice-Chairman) and will have regard to the following criteria (amongst other things):
- 5.5.1 whether there is an issue of consistency of officer recommendation having regard to similar recent applications;
  - 5.5.2 whether the nature of previous decisions relating to the application site may warrant referral to the Committee;
  - 5.5.3 where the officer’s decision may conflict with the Council’s Corporate policies.
- 5.6 Applications for permission for mobile phone masts are delegated to Sal Khan or the Planning Manager or other officers authorised by them and the power of Councillors to request that an application be referred to Committee shall not apply.



