

REPORT TO PLANNING COMMITTEE

19 June 2018

PLANNING COMMITTEE - PROCEDURES AND ARRANGEMENTS

Introduction

The amendments to the Planning and Building (Jersey) Law along with amendments to the States Standing Orders created the constitution of the Planning Committee. The Committee is empowered to act by Article 9A of the Law.

There are requirements within Article 9A which steer how the Committee functions.

These are;

Article 9A (1A) requires an agreement between the Committee and the Chief Officer of the Department of the Environment over how issues will be referred to the Committee for consideration.

Article 9A (3) provides for the publicity of Committee meetings and the availability of information to be considered by the Committee in advance

Article 9A (4) allows the Minister to prescribe by Order procedures for the Committee

Article 9A (5) allows the Committee to determine its own procedure except as provided for elsewhere in the parts of the Article

Article 9A (6) & (7) require a report to be made to the States Assembly on an annual basis in Quarter 1 with comments from the Committee about the policies it has been using to make decisions. In the same report the Minister will respond to those comments

The following report seeks agreement, where necessary, from the Committee over Article 9A as required.

Agreement between the Planning Committee and the Chief Officer

Article 9A (1A) states:

Functions shall be allocated to the Planning Committee by agreement between the Chief Officer and that Committee, and in default of such agreement, the Minister shall determine which functions shall be so allocated.

The agreement as set out (in Appendix 1 below) reflects the operation of the previous Planning Committee. Of course, it is for the current Committee to adopt its

own procedures. However, the current arrangements are forwarded as a starting point.

As well as the circumstances connected with allocation of items the agreement also includes how items shall be determined where the Committee reach a different conclusion than indicated by the Chief Officer's recommendation. Additionally, it includes a provision for when items have been included on a meeting agenda but for whatever reason a party wishes it to be taken off the agenda.

It is important that the agreement is clear and accessible so that everyone involved with or interested in an item to be considered by the Committee understands how and why it is being considered by the Committee.

Applications for planning permission will be presented by the Chief Officer to the Planning Committee in the circumstances indicated below. In each of the circumstances 1-5 all the material considerations will be made available to the Committee in order that it can fully consider each case. The material considerations will be set out in a report from the Chief Officer. The report will include a recommendation as to what the Chief Officer considers the decision should be on the case.

Points 6 & 7 are matters of administration to clarify what happens when the circumstances indicated arise.

Publicity of Committee meetings etc Article 9A(3)

This is a function which was fulfilled by the Department of the Environment for the Planning Committee and will continue to be provided for the Committee.

Minister to prescribe by Order procedures for the Committee Article 9A(4)

The Planning and Building (Planning Applications Committee - Proceedings) (Jersey) Order 2015 has been made by the Minister for Planning and Environment. The Order covers two matters. It sets out when the Committee is quorate (3 voting Members present) and that in the event of a tied vote the item under discussion will not be approved.

Committee to determine its own procedure except as provided for elsewhere Article 9A(5)

The Code of Conduct came about in 2012 following discussions with the Committee and other States Members and was considered to be a useful framework within which Members could operate. Adopting and publishing a Code of Conduct makes for good governance for everyone concerned and allows transparency in dealing with matters.

A Code of Conduct as amended to reflect the withdrawal of the Minister from direct involvement with the dealing of the Committee is attached at Appendix 2.

Committee to consider and comment on an annual basis about policies Article 9A(6) & (7)

Arrangements for gathering comments on the policies will be put in place probably for a monthly round up after each Committee meeting to capture comments over the year as and when they arise. These can then be reviewed in preparation for the Chief Officer to draft a report for the Committee to endorse.

Conclusion

So as to ensure the open and efficient operation of the Planning Committee the recommendations as indicated below should be considered by the Committee and if acceptable, formally adopted.

Recommendations

1. Endorse the agreement as indicated in Appendix 1 to enable functions to be allocated between the Planning Committee and the Chief Officer of Department of the Environment
2. Adopt the Planning Committee Members Code of Conduct as indicated at Appendix 2 to allow for the functioning of the Committee
3. Make comments as appropriate on a monthly basis to contribute to the annual report to the States over policy issues which may have arisen during the consideration of items.

Chief Officer

Department of the Environment

19 June 2018

AGREEMENT BETWEEN THE CHIEF OFFICER AND THE PLANNING COMMITTEE

The Planning Committee will be allocated matters for consideration in the following circumstances

1. Where a grant of planning permission would be inconsistent with the Island Plan.

This is a statutory requirement as only the Committee has the power in the Law to grant development which is inconsistent with the Island Plan

2. Where, following the refusal of an application or the imposition of a condition, the decision was taken by the Chief Officer and the applicant requests within 28 days of the date of the original decision that the Committee review the decision.

This is a statutory process in Article 22A of the Law. A decision on review will not prejudice the opportunity to pursue an appeal to an inspector by either the applicant or anyone who wishes to challenge an approval subject to being entitled to do so

3. Following a request from the Chairman of the Planning Committee that the Committee should consider the matter

The Chairman represents a single point of contact for administrative / communication purposes and members of the Committee can channel requests through the Chairman.

4. Where the matter is considered by the Chief Officer to be of such a nature as to require the Planning Applications Committee to consider the case

Officers from experience are sensitive to matters which would be better considered by States Members through the circumstances of the case.

5. Where an application for planning permission has attracted 4 or more representations from individuals, where each individual appears to be from a different address, and the representations are contrary to the recommendation of the Chief Officer

This retains the current practice which was established by the Planning Improvement Programme Political Steering Group (July 2011)

6. If, after due consideration, the Committee reaches a conclusion which does not agree with the principle of the recommendation made by the Chief Officer, the Committee will furnish the Chief Officer with its planning reasons for arriving at that conclusion. The Committee will require that the relevant documentation to support the Committee's decision be prepared by the Chief Officer and presented back to the Committee at its next meeting for ratification.

If the disagreement relates only to a condition or reason attached to a recommendation then the decision can be finalised at the same meeting of the Committee.

Items placed before the Committee for consideration remain to be determined solely by the Committee. However the Committee relies on the administrative support of the Chief Officer to issue its decisions in all circumstances. Formalising the arrangements where the Committee reaches a different conclusion to the Chief Officer on any matter leaves no room for misunderstanding of how such an issue will be dealt with. It allows reasons for any decision to be properly recorded and documented as the Law requires.

7. When an application has been included on an agenda for consideration by the Committee the item will only be removed from the agenda with the agreement of the Chairman of the Committee.

Once an item is included on a Committee agenda it becomes the Committee's responsibility. A number of parties will be notified (for example, the applicant, along with anyone who has made a representation) and the agenda will be published inviting anyone else to attend the meeting. In these circumstances it is important that the process for dealing with a request for removing an item from the agenda is properly considered.

PLANNING COMMITTEE

MEMBERS CODE OF CONDUCT

5th July 2018

This Code of Conduct sets out the expected behaviour of the Planning Committee and Members of the Committee. The Code is intended to ensure the objectivity and probity of the process by which decisions are made by the Committee and gives guidance to all those with an interest in planning applications.

The Planning Committee is convened under Article 28(1) of the States of Jersey Law 2005 and Article 9A of the Planning and Building (Jersey) Law 2002. These Articles allow for the formation of the Committee.

Article 9A highlights that the meetings must be open to the public. This is not the same as a public meeting.

Members of the Committee discharge a statutory function in determining planning applications and exercising that function in some 200 cases each year. Consideration of applications takes place in a formal and public arena with all the decisions, comments and actions of the Committee open to direct public scrutiny.

THE ROLE OF MEMBERS

1. In making decisions on planning applications or any other matters before the Committee Members will
 - Act fairly and openly
 - Approach each application with an open mind
 - Weigh up the material considerations relevant to each case
 - Avoid undue contact with interested parties
 - Ensure that the reasons for decisions are clearly stated.
2. A Member shall not use their position improperly to confer or secure for themselves or for any other person an advantage or disadvantage.
3. Members should declare any personal, family, property or financial interests in applications being considered by the Committee prior to any discussions commencing on that item. If they are uncertain what constitutes an interest they can consult with Officers but the decision whether or not to declare an interest lies wholly with the individual Member concerned.
4. Members of the Committee should only comment or vote on an application being considered by the Committee if they have been present for the whole of the presentation of and discussions on that application. In cases where the voting on an application is tied the issue will be determined in the negative in

accordance with the Planning and Building (Planning Applications Committee- Proceedings) (Jersey) Order 2015.

5. Members of the Committee shall not give instructions to Officers in order to secure a particular recommendation from Officers on an application.
6. Members of the Committee should not be involved in pre-application discussions with potential applicants. All discussions or requests for advice should be directed to Officers.
7. With the exception of any Senator sitting on the Committee, where an item is within the electoral district that a Committee Member represents then that Member shall withdraw from discussion of that item, making it clear that they will not be taking part in the decision making process. Any such Member would remain entitled to make representations in connection with that item as an elected representative of the district.
8. Site visits by the Committee may be made in connection with applications to be considered so as to better understand the context of the proposals. These visits are made with Officers in the days prior to a Committee meeting and are usually identified when the Committee agendas are drawn up. There may be some cases where the benefit of a visit only becomes apparent at the Committee meeting. In these cases the application will be deferred pending a visit prior to a subsequent Committee meeting.
9. Site visits are solely to enable Members of the Committee to familiarise themselves with the context of the application. No representations can be made by any parties to the Members and Members should make this clear if anyone tries to engage them in conversation over the merits of the application.
10. A Member who receives material from or on behalf of an applicant or third party in connection with a pending planning application should pass that material directly to relevant Officers in the Department of the Environment for consideration. Relevant documents submitted in connection with an application will be addressed in the Officer report to Committee. Although not encouraged, it may be that further information is submitted by interested parties following the preparation and publication of the Officer report. The Committee may consider any such information but reserve the right to defer consideration of an item pending assessment of any such information or alternatively to make a judgement on the information and continue with deliberation and decision.
11. Members of the Committee shall make themselves available for suitable training which covers subjects determined from time to time by Officers in consultation with Members.
12. Members are provided with un-redacted copies of public comments and documentation in order to fully understand all material considerations of each

application. Members must bear in mind that confidential information which they receive in the course of their duties should only be used in connection with those duties. Members should not disclose publicly, or to any third party, personal information about named individuals which they receive in the course of their duties unless it is already clearly in the public domain as part of the planning process. Members must at all times have regard to all relevant data protection, human rights and privacy legislation when dealing with confidential information and be aware of the consequences of breaching confidentiality.