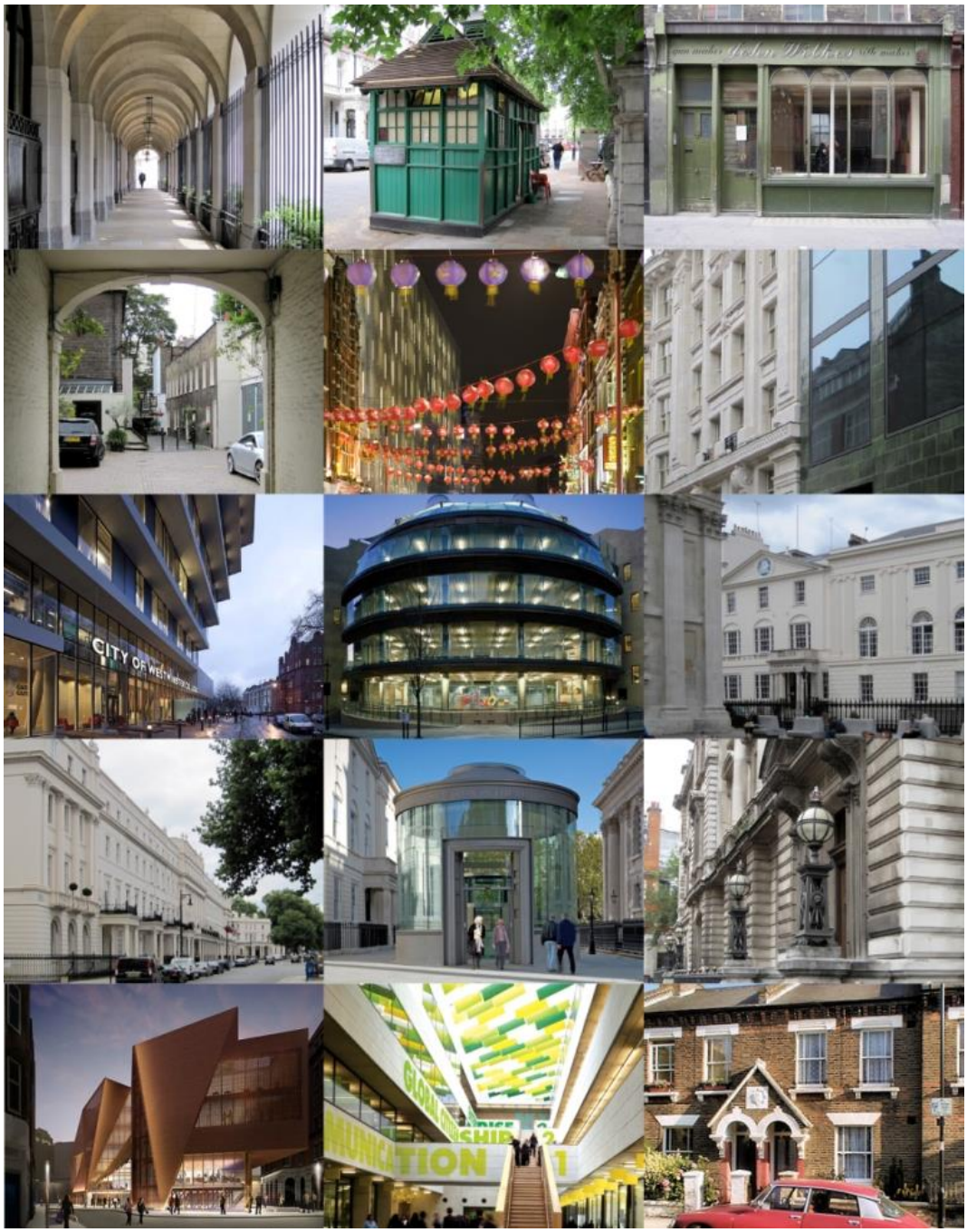
GUIDANCE FOR MEMBERS

Making Planning Decisions



Growth Planning and Housing 2019

City of Westminster

INTRODUCTION

These guidelines have been produced to help Members of the Planning Applications Committees to make robust and consistent planning decisions. They are supplemented by Member training programmes for both induction of new Members of Planning Committees to ongoing guidance for incumbent Members on a topic basis.

These guidelines do not seek to be comprehensive. Much more information on town planning material considerations and procedural matters can be found in our published guidance leaflets, together with advice from central government on the National Planning Policy Framework, Planning Practice Guidance and the Localism Act. However, if you have any queries or concerns, please discuss them with officers. Contact names and numbers are given at the end of this document. Appendix 1 provides some broad information upon some of the issues that may arise at Committee such as what is permitted development and the use classes order.

The Town Planning Service deals with all planning applications, planning appeals against our decisions, the enforcement of planning control, conservation and design work, the production of information publications, maintenance of the statutory register of planning applications, responses to land search inquiries and general planning inquiries. The service also deals with works to trees and Tree Preservation Order matters.

Planning applications must be decided in the context of published planning policies. The City Council's policies are prepared by City Policy and Strategy, which is part of Policy Performance and Communications Service. The law requires planning decisions to be made in accordance with the policies 'unless material considerations indicate otherwise'.

We attach great importance to consulting the public and local amenity societies and taking their comments into account. However, the way we work, and the way you take decisions, is governed by strict rules about what can and cannot be considered. Importantly, our work is also affected by the need to meet targets for the number of decisions we make within the time periods required by Government.
These are:

- 16 weeks for cases that need an 'Environmental Impact Statement';
- 13 weeks for major cases; and
- 8 weeks for the rest.

The priority we must give to meeting these targets limits the extent of our negotiation with developers once they have submitted their application. However, we encourage developers to enter pre-application discussions.
Any comments you have on these guidelines would be appreciated and will be taken on board when they are next updated

Deidra Armsby

(JA Finalised Version)

CONTENTS

1. GOOD PRACTICE IN PLANNING

In dealing with planning matters, it is of utmost importance that you become familiar with and adhere to the requirements of the Members' Code of Conduct. Any failure by you to comply with the ethical standards expected of you may result in a complaint and investigation for the breach of the Code and in certain circumstances, result in you being required to step down or may otherwise have serious ramifications for the reputation of the Council as a whole.

You must not only approach decisions with impartiality but must also have the appearance of impartiality. You must be free of bias and not be pre-determined although legitimate predisposition is lawful. Not complying with these requirements may provide grounds on which applicants may challenge affected decisions. Public confidence in the way in which decision-making is conducted is of considerable importance.

The Code of Conduct

You should also be aware of and adhere to the following general principles, which are applicable to all public office holders:

(i) Selflessness (acting in the public interest and not for any financial gain or similar benefit for themselves, friends or family);

(ii) Integrity (not placing oneself under any actual *or perceived* financial or other obligation to outside individuals or organisations that may seek to influence their decisions);

(iii) Objectivity (selecting public appointments, awarding contracts or recommending individuals for benefits or rewards should be based upon merit);

(iv) Accountability (being accountable for decisions and actions to the public and submitting themselves to whatever scrutiny is appropriate to their office);

(v) Openness (acting in a manner that is as open as possible about the decisions and actions they take, providing the reasons for their decisions and restricting information only where the wider public interest clearly demands it);

(vi) Honesty (being under a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest);

(vi) Leadership (promoting and supporting these principles by leadership and example).

These considerations and general principles must be borne in mind, even when actively engaging in development proposals as enabled by the Localism Act 2011. It should be noted that the Localism Act 2011 expressly provides that a member will not be taken to have had (or appeared to have had) a closed mind just because they had previously done anything that directly or indirectly indicated the member's view on a matter which was relevant to a decision. However, this does not detract from the general importance of approaching decisions with an open mind. You should remember that your overriding duty is to the whole community. You should not favour or appear to favour any person, group, company or locality. You should make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

Conduct and Interests

This Guidance is complementary to the Council's Members' Code of Conduct. Members should apply both the Council's general Members' Code of Conduct and this Guidance in dealing with planning issues.

All Members are always bound by the Council's Members' Code of Conduct ('the Code') and are acting in their official capacity. It will therefore apply regardless of what capacity a Member approaches a planning matter. If a Member has an interest (as defined by the Code) in any matter the existence and nature of the interest must be disclosed at any relevant meeting at the beginning of the meeting.

Where a Member is in any doubt about whether they have an interest and whether it needs declaring they are advised to always seek the advice of the Director of Law or other relevant officers and to disclose all material facts if possible at least 2 days prior to the committee meeting to allow sufficient time for relevant information to be gathered and considered. The responsibility to declare and the decision as to whether an interest should be disclosed and whether to withdraw from the meeting because of any declared interest rests with the Member.

Where a Member has a relevant interest either pecuniary or non-pecuniary the nature of which means the public would consider that the Member could not be objective about the matter they should:

- ask another ward Member to represent ward or local views on such a matter;
- make sure s/he does not get involved in the processing of the application by using their position as a Member to obtain personal access to officers or papers;
- not lobby other Members including via the circulation of letters or emails or by raising the matter in political group or similar meetings;
- not in any way take part in the decision-making.

Pecuniary interests

Members are referred to the Code for definitions of interests but importantly if the Member has a pecuniary interest they may not participate in making the decision either formally or informally behind the scenes. The Member should also avoid giving any appearance of participation as it is important to maintain public confidence in the impartiality of Members in decision-making. Taking part whilst having a pecuniary interest is a criminal offence.

Non-pecuniary interests

Any interest that does not amount to a pecuniary interest, but which would have a significant impact upon a Member's judgement should be declared by the Member at a meeting where that interest is relevant. Whether such an interest should be declared is a matter for the Member's own judgement having full regard to the facts. A planning application on a site near to the Member's home is an example of a non-pecuniary interest.

There are very likely to be interests which do not amount to a pecuniary interest but where the public expectation would be for the Member to not participate. This includes where an application is within a Member's own ward. In such circumstances, to ensure that the the

highest levels of probity and transparency are maintained, the Member should consider standing down for that item, particularly where they have had any engagement with, or received representations from the applicant, their representatives or objectors/ supporters or their representatives, either during or prior to the application,. It falls to the Member in each case to make their individual judgment as to whether their participation is appropriate or not given the nature of the interest. Members are encouraged to declare an interest in a matter for reasons of good practice and transparency for the purposes of being as open as possible with the declaration having no impact on the Member's participation.

Bias and predetermination

Members have a legal duty to avoid bias or the appearance of bias. Bias is the tendency to favour one side of an issue because of an irrelevant factor such as a close relationship with a party to the matter. Members also need to avoid predetermination in other words having a closed mind in a case. They should ensure they do not do or say anything which indicates that they have made their mind up on an application or policy matter before it comes before the Committee for example by stating in advance how they will vote. A Member voting on a planning matter must maintain an open and impartial approach and have regard to all material considerations and all the evidence before coming to their definitive conclusion.

The Localism Act 2011 sets out what a court can take into account in considering whether bias and pre-determination has occurred. Section 25 of the 2011 Act provides that a decision-maker is not to be taken to have had or appeared to have had a closed mind when making the decision just because they had previously done anything that directly or indirectly indicated what view they took or might take in relation to a matter.The aim is that Members act and are seen to act impartially and honestly by approaching each planning decision fairly between the parties and with an open mind. If a Member wishes to take a stance in relation to a development or feels that it will be difficult to demonstrate that they have followed a consistently fair approach between all parties in a case, they should not be part of the decision-making process on the application. In such an instance they can choose to act as a ward Member on that matter. Irrespective of whether a Member has a pecuniary interest in a planning matter they must not be involved in the decision-making if this would render such a decision liable to challenge in the courts on the grounds of bias or predetermination.

Gifts and Hospitality

Accepting gifts and hospitality in your capacity as Member is not unlawful. However, as a Member of Planning Application Committees, you must exercise extreme caution, given how it might be perceived by the public. The best advice is to avoid accepting gifts and hospitality at any time during the planning process including after a decision is made but understandably refusal might be awkward at times. As a minimum you must be scrupulous in declaring gifts and hospitality, as well as all disclosable pecuniary and non-pecuniary interests and if necessary, excuse yourself from planning committee or retire from consideration of a matter to avoid a conflict of interest. Even where gifts and hospitality may be lawfully accepted, Members remain responsible for considering the propriety of doing so and declaring any such gifts and hospitality to avoid speculation and negative perception.

The obligations in the City Council's Code of Conduct are placed on Members individually. You must consider whether your actions could lead to a perception, whether fairly or unfairly that may damage your reputation and/or that of the Council. You should always be aware of whether your conduct promotes and supports high standards of conduct through leadership and by example.

In considering these matters, you should have regard to the value of any benefit received, the number or frequency of such benefits and the connection between the benefits received and planning decisions that you will be involved in making. In some circumstances, actions that are neither unlawful nor breach the Code of Conduct will be inappropriate from the point of view of the Council's reputation.

In accepting any gift, benefit or hospitality Members should consider the following principles to guide them, as suggested by the Committee in Standards in Public Life and adopted in the Members' Code of Conduct:

- *"Purpose" – acceptance should be in the interests of Council departments and should further Council objectives*

- *"Proportionality" – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation/ individual may lead to an impression that the organisation/ individual is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider*

- *"Avoidance of conflict of interest" Members should consider the provider's relationship with the Council, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation"*

Under the Bribery Act 2010 it amounts to an offence to offer financial or other advantage to another person or to accept such an advantage if the receipt or anticipation of receipt of such an advantage would result in, be intended to result in, amount to, or be done in return for the improper performance of a public function. In this case, the public function to be properly performed is the lawful determination of planning applications.

If for any reason you are unclear about what is expected of you, you are advised to seek advice from in the first instance the Director of Place Shaping and Town Planning ***before*** taking action or accepting gifts or hospitality.

Site Inspections

The Committee may resolve to make a site inspection before reaching a decision. In such cases these are fact finding exercises and not opportunities for applicants and objectors to lobby the members. You should refrain from giving views to either party. If you choose to make your own site visit prior to the committee meeting you should do so alone and should rely on street views only. If you meet an objector or the applicant on site, by accident or design, you should not sit on the determining committee. To do so would be to invite criticism that you have offered one party an unfair advantage.

Decisions contrary to Officers' Recommendation

Planning decisions must be made in accordance with the 'development plan' unless material considerations indicate otherwise. Decisions must be capable of being substantiated so, in the interests of openness and clarity, the reasons for a planning decision contrary to the officers' recommendation should be discussed and clearly agreed and included in the minutes of the Committee meeting.

Development proposals submitted by, or which may have an impact on Councillors, their families and their close associates

It is important that applications submitted by Councillors and their close associates or which relate to sites affecting them/their close associates are processed without the suspicion of impropriety or favouritism. There is a box on the planning application forms which must be completed.

The following advice is provided to assist Members in this situation:

You should declare a pecuniary and non-pecuniary interest where under the Members' Code of Conduct your interest is such that a conflict of interest arises because of family links, business associations, social contacts, membership of clubs or similar associations, land ownership, tenancies and sponsorship. In these circumstances you must declare the nature of your interest and ensure that it is written into the minutes of the meeting and must leave the room without speaking or voting on the item. Where your interest under the Code is non-pecuniary subject to the guidance given at section above, you must declare it for the purposes of ensuring that it is entered the minutes of the meeting but may remain and take part in both speaking and voting on the item.

Where you have applied or are aware that your immediate family members/other close associates have applied, you should advise the Director of Place Shaping and Town Planning or relevant Team Leader.

Proposals submitted by you or your close associates will be presented to Committee for determination and will not be dealt with under delegated powers.

If you have an interest whether pecuniary or otherwise in an application you should ensure that you do not try to use your position to seek to influence the officers' recommendation or Committee Members' decision in determining it, by avoiding direct negotiations with officers and lobbying of other Members and officers. Please see refer to the Good Practice in Planning. In the interests of probity, if you have business or other interests that may bring you into regular contact with the City Council's planning system you should consider whether it is appropriate for you to sit on the Committee.

If you ever have any concerns on issues relating to probity or declaration of interest, you should contact the Director of Law, who will be able to advise you.

2. COMMITTEE STRUCTURE

The Planning Applications Committees

There are three Committees on Tuesdays at 6.30 p.m. on the 18th Floor City Hall. There is a Major Applications Committee which comprises of seven members in total (5 from the majority party and 2 from the minority party). Two Sub-Committee's operate which are comprised of four members (Members of the majority party and 1 Member from the minority party, there is therefore a total of 15 Members (3of whom act as Chairman) who sit on the Committees on a rota basis.

The Committees consider planning and related applications which have generated public interest or concern or are of a major, controversial or sensitive nature or which, if approved, would set a significant precedent. Most of the applications are dealt with by officers under delegated powers. The Committee also decide on whether to confirm Tree Preservation Orders (TPOs) and give guidance to officers and the Cabinet Member on emerging planning policy documents, including Planning Briefs/ Supplementary Planning Documents. In addition, Committee has the power to approve highway works and stopping up orders required in connection with planning applications.

Decisions delegated to specified officers

The Council receives about 200 applications a week and it would be impractical to report them all to the Committees for determination. So, many minor and non-controversial applications are decided by specified senior officers acting under delegated powers and currently deal with 97% of applications by delegated powers.

Members are sent a weekly list of planning applications received, and if you have any questions please contact the relevant team leader or the case officer. If you do decide to request that an application is reported to the Committee for determination rather than being dealt with under delegated powers, you will be expected to set out your reasons and you must attend the committee meeting in person to speak either for or against. If you cannot attend the meeting, you must send a substitute.

In addition, each week we notify you of the more significant applications which we intend to decide under delegated powers. These are known as 'DIRM' cases (Delegated Items Referred to Members). These applications are also shown to the Chairman before each Committee meeting and need his/her agreement before we make the decision. If you have any queries on any DIRM case, please contact the relevant Team Leader.

3. COMMITTEE PROCEDURES

The Director's Reports

The agenda contains separate reports for all the applications that are to be considered. Each report starts with a table of information, a recommendation, a map and photo(s), several relevant drawings, a short summary and a list of consultees and their responses. It then describes the development proposals, details the relevant planning issues and policies and provides a justification for the officers' recommendation. Usually the recommendation is to either grant or refuse permission and is the professional advice of the Town Planning service. At the end of each report, the draft decision letter(s) sets out the conditions or reasons for refusal.

The use of concise reports with clearly justified recommendations has been identified as good practice in various investigations into local government procedures. It assists the debate on development proposals to proceed in a structured and disciplined manner. Importantly it provides evidence that the decision was made in a thorough, proper and considered way.

Any report that asks the Committee to decide whether to confirm a Tree Preservation Order (TPO) is written by the Head of Legal Services. This is because the original decision to make the TPO will normally have been made by the Director under delegated powers; the report to Committee asks Members to balance the reasons for the making of the order against the concerns of objectors to the Order. The Committee, therefore, has a quasi-judicial role in these cases. A tree officer will be present, but only to answer technical questions, not to justify the making of the Order.

Committee may also consider applications to fell TPO trees because they may be causing structural damage and there is a claim for compensation. Such cases are confidential as they raise financial implications for the Council.

The agenda papers are usually sent to you on the Wednesday preceding the Tuesday Committee. In addition to your agenda you will also receive a bundle of background papers (green front cover) which contain copies of the representations that have been received on the agenda items.

Chairs of the Committee are advised of the numbers of people who have applied to speak at Committee by the Committee Officer normally on Friday afternoon once the deadline to register has closed.

Late representations (blue front cover) will be sent to you in the Members' Dispatch the Thursday before the meeting (these include any representations received after the committee report was written). Very late representations (red front cover) will be presented at the committee meeting by the presenting officer.

Officers attending Committee

The **presenting officer** gives a short presentation which describes the proposal, summarises the representations received, describes the impact of the development on neighbours and explains the relevant planning policies and the reason for the recommendation.

We use several monitor screens to show drawings, photographs etc to the members of the Committee, with the images also being relayed to several large flat screens in the public gallery.

The **design officer** at committee gives specialist urban design, architectural and conservation advice and answers your questions on these issues.

The **presiding officer** is present to assist you with more difficult questions and give advice on strategic and corporate policy issues. This will be one of the Area Team Leaders.

A **Legal officer** will be in attendance to ensure legal issues can be fully addressed.

Whenever there is a need for the availability of further expertise relevant officers (for example environmental Health officers, highways engineers) will attend to ensure that Members have a full range of advice and guidance to make robust decisions.

Public Speaking at Committee

We notify all those people who make representations including the agent that an application is going to Committee .If they wish to register to speak , this must be done on line www.westminster,gov.uk/planning-committee and they must register by 12 noon on the Friday before the Committee .

The Committee section will email the Chairman/Committee Members and the presiding officer the names of people who have registered to speak on Friday afternoon and whether speaking in support or against.

It has been agreed that each individual speaker attending the Committees will have 3 minutes to speak.

Speakers at Major Applications Committee are capped at 2 for and 2 against. Sub-Committee it is 1 speaker for and 1 against. If there are more speakers than slots more than one speaker they are asked to either nominate a person to speak on their behalf, or the slots will be divided.

Ward Councillors and the local amenity society if they wish to speak at Committee must also register on line by Noon on Friday.

Late representations to speak after the deadline will not normally be permitted.

Speakers are invited after the officer's presentation to sit at the desk and address the Committee. On our website is a list of the material planning considerations Committee can consider and those which cannot.

Order of Business	
i)	**Planning Officers presentation of the case**
ii)	**Applicant/agent or other supporters**
iii)	**Objectors**
iv)	**Amenity Society (Recognised or Semi Recognised)**
v)	**Ward Councillor(s) and/or MP(s)**
vi)	**Council Officers response to verbal representations (if required)**
vii)	**Member discussion (including questions to officers for clarification)**
viii)	**Member vote**

M**aking a Decision**

The order of items on the agenda will have been arranged by officers, usually with the more major or contentious items at the start. However, the Chairman will decide the order in which the cases will be considered, and it depends on whether people have registered to speak

It is usual for items where there are Ward Councillors present to be taken first, followed by items for which there are members of the public present. The presentation, therefore, is not always in agenda order. Overall, the agenda usually comprises between 3 and 8 items.

You may agree or overturn the recommendation or may include additional conditions or agree the recommendation subject to a legal agreement if justified in planning terms. A decision on an item may also be deferred if you wish to visit the site, or consider that further consultations should be undertaken, additional information or clarity is required, or you wish officers to seek modifications to the scheme. Deferred decisions are generally brought back to same Committee for the decision.

Draft decision letters are sent out with your Committee papers. Proposals to grant permission or listed building consent normally include several conditions attached, and these can cover design issues such as the submission of samples of materials and design details, controlling future uses, and limiting hours of building work. An informative is added to decision letters granting planning permission and listed building consent, which summarises the reasons for approval. Decision letters which refuse planning permission/listed building consent must include reason(s) why the development is not acceptable.

Overturning a Recommendation

Sometimes you may not reach the same conclusions as officers and decide not to accept the recommendation, In making their recommendation, the case has been fully assessed by the professional planning officers and pursuant to Council's policies. Decisions are subject to legal challenge and therefore care is required to ensure that such decisions are defendable at appeal or Judicial Review and there is the additional risk of a costs award against the Council where a decision is found to be unreasonable. Planning decisions are often difficult, they require the balancing of conflicting factors and judgement on the weight to be attached to different elements of the consideration. The Presiding Officer is there to assist you and you can ask their professional judgement.

However, where you decide contrary to the officers' recommendation, or impose additional conditions or reasons for refusal, you **must give sound and clear-cut planning reasons** for your decision. You do not have to agree the detailed wording for the extra condition or reason for refusal. This can be brought back for ratification later if necessary but is usually entrusted to senior officers to deal with under their delegated powers. However, you must make clear the **planning reasons** that have led to your decision. It is therefore essential that the grounds for the decision are given and minuted at the Committee meeting, particularly where the recommendation is overturned.

Failure to do this would make it very difficult for the Council to defend its decision on appeal. It is also likely to lead to **a claim for costs being made against the Council**. (See section 8) and raises reputational issues for the Council.

Members will be asked to vote in respect of the final recommendation by a show of hands. The Committee Chairman does have the casting vote. The vote is recorded in the committee minutes.

York Watergate, WC2

4. OTHER TYPES OF APPLICATIONS

In addition to planning applications, the following types of applications are submitted under the Planning Acts.

Listed Building Consent

There is an enhanced procedure for proposals involving Listed buildings. Consent is required for most works (both internal and external) to a listed building. These applications may be submitted on their own where the works are purely internal, or in conjunction with planning applications when both internal and external work is proposed. Most applications relating to Grade II listed buildings (the lowest grade) can be decided by the Council without formal clearance from Historic England, as with planning applications. However, for applications involving demolition, and all applications affecting Grade 1 and Grade II* buildings, the City Council cannot issue a listed building consent until formally authorised to do so by Historic England. Committee Members are therefore not the sole decision makers in these cases.

The main issues to be considered when dealing with listed building consent applications are the likely effects of the proposal on the architectural or historic qualities of the building.

Section 16(2) of the Planning (Listed Buildings and Conservation Area) Act states:

> "In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

In certain circumstances a further layer of decision making occurs as approval is required from the Secretary of State for the total demolition of a listed building and for any listed building application where the City Council itself is the applicant.

The Planning (Listed Buildings and Conservation Area) Act also gives guidance for situations where the Council is considering a *planning* application affecting a listed building. Section 66(1) states:

> "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Advertisement consent

Separate regulations cover the procedures and relevant considerations for advertisements, which include shop signs, blinds (with writing on) and estate agents' boards. Most small scale, low level, non-illuminated signs do not require consent from the City Council. Material considerations in the determination of Consent are specifically limited to **public safety or amenity.**

With respect to estate agents' boards, the City Council has several specially designated areas (‘Regulation 7 Areas’) where no signs advertising residential properties are allowed, and where we will only permit signs on commercial properties when the detailed design accords with an agreed code and for a limited six-month period.

Planning Enforcement

Local planning authorities provide planning enforcement services which are a vital part of the planning process. By identifying and tackling cases of unauthorised development, the enforcement process ensures fairness, stops unacceptable development and gives communities confidence in the system. The Localism Act 2011 gave new powers to local planning authorities by extending the time available to them to investigate cases where unauthorised development has been deliberately concealed.

Although effective planning enforcement is fundamental to the integrity of the system, responses to breaches of planning control should always be proportionate. Where work has been undertaken without the necessary permission, there is scope to apply retrospectively for planning permission, and we do request that applicants apply to regularise the situation.

These powers do not condone development being undertaken without the correct permissions, but they do enable local authorities to use their planning enforcement powers proportionately.

Because of an enforcement investigation, a retrospective application is made. In determining such applications at committee members must ensure that the same process of ensuring a robust and consistent decision is made The fact that unauthorised works have taken place does not change the range of material considerations that determine the decision. The

application must be determined on its planning merits and its retrospective status is NOT in itself a material consideration.

5. MAKING PLANNING DECISIONS

Planning applications are determined in accordance with the statutory development plan, unless material considerations indicate otherwise. The planning system is plan led which means that compliance with planning policy is paramount For Westminster the statutory development plan consists of Westminster's City Plan 2016, the Unitary Development Plan, the London Plan and any neighbourhood plans. The scope of what can constitute a material consideration is very wide, so long as they relate to land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light are not material considerations. It is for the decision maker to decide what weight is to be given to the material considerations in each case.

National Planning Policy Framework (NPPF)

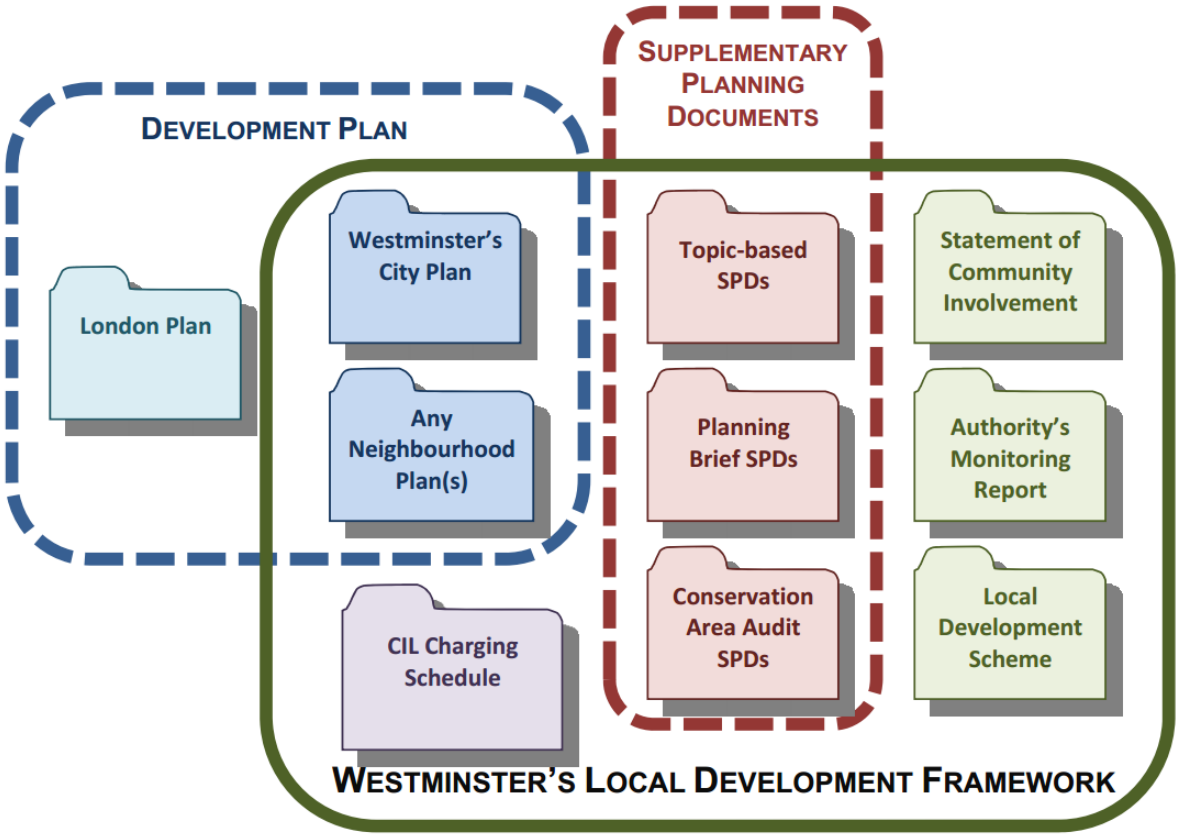
In July 2018, the Government published an updated version of the National Planning Policy Framework (NPPF). This sets out national planning policies for England. It makes clear that the purpose of planning is to help achieve sustainable development, covering economic, social and environmental aspects. It covers both plan-making and the taking of planning decisions. The policies in it must be considered in preparing Local Plans and neighbourhood plans and it is a 'material consideration' in deciding planning applications. However, it does not dictate how local and neighbourhood plans should be written or planning outcomes but is rather a framework for their preparation – we must have regard to what it says but can depart from it where there are sound reasons for doing so.

The recently revised NPPF is a shorter document, and again it is strongly focused in favour of sustainable development and the delivery of more housing.

The NPPF is backed by detailed national guidance on topics brought together in National Planning Practice Guidance. This, for example, deals with the specific requirements around securing affordable housing and administration of the Community Infrastructure Levy.

Westminster's Planning Framework

The diagram below shows the documents which make up Westminster's Local planning policy – each element is explained in more detail below.



The London Plan

In London the Mayor remains responsible for producing a strategic plan for the capital, in the form of his "spatial development strategy" - commonly known as the London Plan. The London Plan provides London boroughs with an overarching framework for their local plans, helping them to tackle strategic as well as local issues effectively. Local Plans in London need to be in line with (in 'general conformity' with) the London Plan, which also guide decisions on planning applications by London borough councils and the Mayor as it forms part of the statutory development plan. Policies in the London Plan are therefore a material consideration in the determination of planning applications. The current London Plan was adopted in 2016.

There have been several major changes to the London Plan following the election of the new Mayor. Consultation of the draft London Plan finished in March 2018 and the examination in public opened in January 2019 and is likely to report in Autumn 2019. It is a material consideration in the determination of planning applications and can be given some weight due to its submission to the Secretary of State for examination in January 2019. The Mayor has produced several supplementary planning documents and of relevance to Westminster are:

Culture & the Night-time Economy Nov 2017
Affordable Housing &Viability August 2017

Major Applications Referred to the Mayor

Several major planning applications are referable to the Mayor (developments over 30 m in height, over 150 residential units or on Metropolitan Open Land). The initial consultation

which is undertaken when the application is received is known as Stage 1 referral and is referenced in Committee reports. Following the Committee Council resolution, the application is referred to the Mayor known as Stage 2. The Mayor has 14 days to produce his Stage 2 report and can either be content for the Council to issue approval, or he can direct refusal or call in the application to be determined by the GLA. The mayor does exercise this power.

Westminster's Local Plan

Local Plans are the key documents through which local planning authorities can set out a vision and framework for the future development of the area, engaging with their communities in doing so. Local Plans address needs and opportunities in relation to issues such as housing, the local economy, community facilities and infrastructure. They should safeguard the environment, enable adaptation to climate change and help secure high quality accessible design. The Local Plan provides a degree of certainty for communities, businesses and investors, and a framework for guiding decisions on individual planning applications.

Producing the Local Plan is a shared endeavour – led by the Council but in collaboration with local communities, developers, landowners and other interested parties.

Westminster's local plan is the City Plan which was adopted in November 2016. In conjunction with the City Plan saved Unitary Development Plan (UDP) policies (adopted 2007) are also used to determine planning applications. The saved UDP policies are increasingly outdated and must be replaced by up-to-date detailed development management policies – if not there is the risk that they will be given less weight by inspectors at appeal or by the Mayor and ministers in taking planning decisions affecting Westminster.

Draft City Plan

The City Council is currently working on a review of its City Plan. Informal consultation on the first draft of the City plan 2019-2040 took place between 12.11.2018 and 21.12.2018. Following this informal consultation, any representations received are being considered and the draft plan will be revised in advance of formal consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012. Given the very early stage in the consultation process, the policies in the emerging draft City Plan are given limited weight now. it is anticipated that the Regulation 19 version of the new City Plan will be issued in June 2019.

Neighbourhood Plans

Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. Communities can prepare plans with legal weight as part of the statutory development plan and can grant planning permission for the development they wish to see through a 'neighbourhood development order'.

In Westminster there are 20 designated Neighbourhood Areas, The Knightsbridge Neighbourhood Plan has been recently adopted (December 2018) and is a material consideration in determining planning applications in Knightsbridge Neighbourhood Area. You will see reference to Neighbourhood Plans in the committee reports.

Supplementary Planning Documents

Supplementary Planning Documents (SPDs) expand on adopted planning policy to provide more detailed information that can be contained in the policies themselves. They give guidance to the public, applicants and developers when making planning applications. In some cases they may set out how policies apply to a particular site.
SPDs do not have the same status as the policies within the Development Plan but have been subject to public consultation and are taken into account as material considerations in dealing with planning applications. They have to be consistent with adopted local plan policies and cannot be used to make new policy.

Westminster has adopted a number of SPDs which are either topic based (e.g. basement development, design matters, statues and monuments etc), conservation area audits or planning briefs. 28 or Westminster's 40 adopted supplementary documents (some are called supplemetary planning guidance, or SPGs) were published prior to the adoption of the Unitary Development Plan in 2007 and could therefore be challenged for their relevance. A review of the SPD's will be carried out this year. However, they can be referred to in Committee reports.

Statement of Community Involvement

The Statement of Community Involvement (SCI) sets out how the council will involve the community in the planning process. It sets out the principles for consultation on planning policy documents and for development. For the purposes of Committee reports, consultation procedures and obligations are carried out on Planning proposals in line with legislation and any additional requirements from the SCI.

Material Planning Considerations

This section examines what you should, and should not, consider when deciding planning applications.

In addition to the development plan, it is very important that any other 'material considerations' are considered. The case law on what is or is not 'material' under the planning acts is complex, and officers will give guidance on these matters in reports and at Committee.

Nevertheless, there are some issues (prevention of loss of residential accommodation, protection of historic buildings) where the Secretary of State and the Courts recognise that there should always be a strong presumption in favour of the policy as they are clearly interests of importance. Below are some notes on some of the matters that may arise:

National Planning Policy and Guidance.

The Government's planning policies for England are set out in the revised National Planning Policy Framework (NPPF). The NPPF essentially introduced a presumption in favour of sustainable development and makes it clear that the Government expects planning applications to be granted unless there are very good reasons to the contrary. It provides a framework within which local people and their councils can produce their own

local and neighbourhood plans, which reflect the needs and priorities of their local communities.

Third Party Interest.

Planning is concerned with protecting the public interest, and not with the protection of the private interests of one person against the activities of another. For example, the effect of a proposed development on a neighbouring property in terms of the light it receives as a result, or the privacy of the occupiers, is a valid planning consideration but judged on the basis of fact and degree as it relates to the quality of the community's living environment. However, the financial implications for the neighbour in terms of the value of their property or the effect of any competition on their business, are not valid planning considerations.

Moral Considerations.

It is not acceptable in law to refuse permission for a use on the basis of a moral objection. Permission could, however, be refused should the use be contrary to a planning policy that aims to protect the character and function of an area. Thus, a betting shop or a sex shop cannot be refused purely claiming it is not considered to be a desirable use, nor claiming there are already several others nearby. However, if a proposed betting office would displace a use that serves a useful local function or would lead to an imbalance in the range of shops and services that is detrimental to the character of the area, then refusal could possibly be sustained because they are embedded in the policy framework

Note that uses which may provoke objections on moral grounds e.g. sex shops, also require licences from the Licensing Sub-Committee where wider issues may be considered.

Financial Considerations

This is most likely to arise when applicants propose to offer less affordable housing than our policy sets out to achieve. Our usual practice is to commission an independent viability appraisal. Recommendations to committee will be based on the outcome of this independent study. If you wish to see the full viability reports, please contact the presiding/presenting officer prior to the committee meeting.

The City Council requires that applicant's viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances. A redacted version is submitted and uploaded on our website.

Financial considerations are gaining in prominence as the NPPF urges a positive approach to economic growth and the Mayor is also carrying out a second viability assessment on Stage 2 referrals and introducing post viability reviews on major schemes. There is a fine balance to be reached in respect of applications which raise viability issues.

Personal Considerations.

The identity of a developer or occupier is not usually a material consideration as planning permission relates to the property and normally continues whoever owns or occupies that property. Personal circumstances are sometimes put forward in support of planning applications, where it is argued that serious personal hardship will result if permission is

refused.

In the case of change of a use, it may be appropriate to take considerations of severe personal hardship or very special circumstances into account. A change of use can be a temporary arrangement and permission, in exceptional circumstances, can be given specifically to an individual, or for a specified time, to expire when that person no longer requires the property for that purpose. In the case of personal permissions, when the named person leaves the property, it has a 'nil' use (i.e. any future use requires the benefit of planning permission). Temporary and personal permissions should be used with care as it is often difficult to 'recover' the original use or argue that continued use (or use by another person) would be harmful.
These considerations will be fully explained in Committee reports.

Consistency of Decisions

The Committee must be consistent in the decisions it takes on similar cases in similar circumstances. Planning authorities must behave equitably between applicants and must be seen to do so. Personal circumstances would need to be very exceptional to justify treating similar applications differently.

Inconsistent decisions can lead, at the very least, to an appeal being upheld, or the award of costs against the local authority for acting unreasonably. (More advice on costs at appeal is given later in this guidance note). In extreme cases, the decision may be quashed in the Courts or be revoked by the Secretary of State, with the payment of compensation to the applicant.

Any previous relevant planning decisions made in respect of the site or on nearby similar properties should be considered, as should relevant appeal decisions.

A Summary of Dos and Don'ts

It is important to remember that the Committees are meetings held in public There will be an audience with applicants and objectors present to listen to the discussion of their application, and notes may be taken of the proceedings. The applicant, their agents, local amenity societies, residents and Ward Councillors can now register to speak at the committee meetings. The meeting is also recorded. The Committee meetings will be live streamed shortly, and therefore it is important that meetings are conducted in a professional manner. Well conducted planning Committees provide confidence to residents and applicants to invest in the borough as they are symbolic of robust decision making.

The substance of the discussion could be relevant in an appeal against the decision or a legal challenge. Issues discussed may also be referred to the Local Government Ombudsman if there is a charge of maladministration. In extreme cases, there could also be claims of wilful misconduct by Members. If upheld, such charges can lead to personal surcharge and disbarment from public office.

Here are the key dos and don'ts:

DO HAVE REGARD TO:

- **The Development Plan (i.e. the City Plan /UDP and Regulation 19 version of City Plan 2019 and existing and emerging London Plan and adopted neighbourhood Plans.**
- **Central Government guidance**
- **Other material considerations set out in the report.**
- **Relevant comments made by residents and other consultees- where they raise legitimate planning grounds/ degree of harm**
- **Consistency of decisions**
- **Giving clear planning reasons for overturning an officer's recommendation**
- **Giving clear reasons for an application's deferral and thereafter its decision-making route**
- **Declaring any interests, you may have that could affect your impartiality**

DO NOT HAVE REGARD TO:

- **Matters raised in representations that are not pertinent to planning such as loss of property values or covered by other legislation**
- **Whether the application is retrospective**
- **Other uses that would be preferred****
- **Matters covered by other legislation such as licensing (although there will be overlaps)**
- **Moral considerations**
- **The identity of the applicant (in most cases)**
- **Private interests such as party wall matters, disputes between owners, (unless coinciding with the public interest)**

** Other uses you would prefer to see are not material considerations. You must judge the submitted application on its own planning merits.

IN CONSIDERING APPLICATIONS WHERE A DECISION WAS PREVIOUSLY DEFERRED BY COMMITTEE, DO HAVE REGARD TO:

- **Only those matters for which the application was deferred – generally it will not be appropriate to re-open matters that were previously considered and agreed by an earlier committee**

- **New representations received, particularly those that relate to the matters for which the application was deferred**
- **Any new matters raised as a direct result of a revised proposal**

St James's Park, SW1

6. CONDITIONS IMPOSED ON PLANNING PERMISSIONS

Local authorities have the power to impose such conditions as they think fit on planning permissions to make otherwise unacceptable development acceptable. Such conditions must, however, comply with the requirements of the National Planning Policy Framework and the associated advice on the use of planning conditions in the Government's Planning Practice Guidance. Planning conditions should only be imposed where they are:

Necessary – would the development be unacceptable without the condition?

Relevant to planning – the condition must relate to planning objectives and be within the scope of the permission to which it is attached. It should not be used to control matters which can be regulated under other legislation.

Relevant to the development to be permitted – the condition should directly relate to the development that is the subject of the permission. It is not, for example, acceptable to use the opportunity of a planning permission to obtain some improvement which is not necessitated by the proposed development.

Enforceable – a condition should not be imposed if it cannot be enforced by the local authority: e.g. where it would be impossible to detect a contravention or remedy any breach of condition, or where it concerns matters over which the applicant has no control).

Precise – the condition should be clearly worded so the developer is in no doubt as to what must be done to comply with it. Qualitative terms such as 'tidy' or 'nuisance' require interpretation.

Reasonable in all other respects – a condition should not be so restrictive that it nullifies the benefit of the planning permission or places unjustifiable/disproportionate burdens on the applicant: e.g. one that imposes unrealistic opening hours. Conditions that require liability for works such as maintenance would also be unreasonable.

It must always be remembered that applicants can appeal to the Secretary of State against the imposition of any condition, so care should be taken that conditions meet all the above tests.

The City Council uses many standard conditions and informatives and if you require any further information please contact the Team Leader.

You may also see reference to a condition (known as a 'Grampian Condition') that prevents any works commencing until appropriate arrangements are in place to secure the agreed planning benefits from a Section 106 Agreement To comply with the requirements of the condition, the applicant will usually have to complete a Section 106 agreement to discharge this condition prior to starting works on site.
From 1 October 2018, any Pre-Commencement Condition now needs the applicants' written agreement and they are given 10 days' notice. If an applicant fails to agree to a pre-commencement condition, we can refuse planning permission. You will see reference to these pre-commencement conditions in the Committee reports

7. PLANNING OBLIGATIONS (SECTION 106 AGREEMENTS)

Introduction

A planning obligation can involve a legal agreement between the Council and the applicant (and others) or can be offered by the applicant unilaterally. It secures some additional works or other benefits **that are required to make a development proposal acceptable** and which, cannot be secured by a planning condition. They may **prescribe** the nature of the development, **compensate** for loss or damage created by the development; or **mitigate** a development's impact.

The legal mechanism for achieving planning obligations is set out in Section 106 of the Town and Country Planning Act 1990.

Where planning permission is granted for development that includes planning obligations, permission is granted subject to a 'Section 106 legal agreement', which ensures that the obligation is provided. Planning permission is therefore not issued in these cases until that Section 106 has been completed. An obligation is a charge on the land and is enforceable on successors in title to the land.

Advice on the use of planning obligations is provided in the National Planning Policy Framework and in the planning obligations section of the Government's Planning Practice Guidance. The advice makes it clear that the circumstances where obligations will be sought should form part of the development plan. Planning obligations should only be used where it is not possible to address unacceptable impacts of the proposed development by imposing conditions. Planning obligations should only be sought where they are:

1. **Necessary** to make the proposed development acceptable in planning terms.
2. **Directly related** to the proposed development.

3. **Fairly and reasonably related in terms of scale and kind** to the proposed development;

So, for example, under test 3 it would be reasonable that a developer be required to pay for the upgrading of infrastructure that serves the development, but the payment should be related to the degree to which the development would benefit from the upgrading.

The obligations offered may be considered insufficient, and therefore the application may be considered unacceptable on legitimate planning grounds – its failure to satisfy policy requirements, or to appropriately mitigate its impact. However, the NPPF requires that account should be taken of market conditions and that planning obligations should be sufficiently flexible to prevent planned development being stalled.

The offer of planning obligations cannot make an unacceptable development proposal acceptable. The form and extent of the obligation is assessed as part of the development proposal. Occasionally, obligations are offered that go beyond what is strictly necessary or directly related to the development proposal. In these circumstances the obligation can, so long as it has some relationship to the development proposed, be accepted. However, it should not be given weight when assessing the merits of the development proposal.

It follows, based on the published advice, that planning obligations should not be viewed as a general opportunity to gain some benefit unrelated to the development in return for a grant of planning permission.

The Council will be updating its Supplementary Planning Document on planning obligations in the light of the new draft City Plan and central government advice in the new NPPF. It is most important for the integrity of the planning system and robust decision making that all obligations secured are dealt with in an open and impartial manner.

Acceptable Planning Obligations

These are examples of items normally accepted as planning obligations:

(i) The environmental improvement of an area or building outside the development site.
(ii) The dedication of land or facilities for public recreation, cultural or social use, e.g. areas of public open space, sports facilities or community uses.
(iii) The provision of light industrial floorspace to be safeguarded in perpetuity for this use, and not to change to office use. (Both uses are normally in the B1 Use Class).
(iv) The restoration of a listed building or one contributing to a conservation area, over and above the normal maintenance works expected from any property owner.
(v) The provision of affordable housing.
(vi) employment training/contribution.

By the time an application comes before Committee, negotiations will have been undertaken to secure the most appropriate development, and, where appropriate, benefits which are related to the development. The weight to be given to these aspects will be addressed in the report. The report will describe the type of obligation offered, and whether it is considered to satisfy the relevant planning policies.

If you are not satisfied with obligations negotiated by officers you may wish to instruct us to negotiate for more, or different, benefits. **However, it is essential that all negotiation for obligations have regard to Government advice and Development Plan policies.** The applicant has the right to appeal against non-determination and, as with appeals against refusal of planning permission, the City Council is at risk of an award of costs if it has acted unreasonably (see Section 8). The City Council should also be seen to be taking a consistent approach to the application of its policies. If either Members or officers are considered to have acted unlawfully or improperly, then there is the risk of an Ombudsman investigation resulting in costs against the City Council and/or individual Members. In exceptional cases aggrieved third parties could seek a judicial review to have the Council's decision quashed.

Here are the key dos and don'ts.

DO:
• **Ensure that the obligation is clearly related to the development** • **Ensure that the scale of the obligation reflects the scale of the development (it is unreasonable to expect wide scale environmental benefits in relation to a minor scheme)** • **Ensure that correspondence relating to the obligation is clear in terms of what is on offer and is available for public scrutiny** • **Ensure that the obligation is linked to an agreed programme of works for which there is a commitment to implement (e.g. the obligation should not be in the form of a financial contribution unspecified in purpose)**

DO NOT:
• **Deal with obligations in a way that is not easily accessible to public scrutiny** • **Accept an offer of a contribution of money to the Council for unspecified works** • **Approve an unacceptable scheme purely to achieve the obligations on offer** • **Insist upon obligations when a scheme is clearly acceptable without them - in such circumstances the benefits can be requested but not insisted upon**

Portland Mews, Soho W1

8. APPEALS AND AWARDS OF COSTS

An applicant can lodge an appeal to the Secretary of State against the Council's decision to refuse planning permission or to impose conditions on a planning permission. The Council has a good record of defending the Council's decisions and overall more than 69% of appeals are dismissed.

In any appeal, an appellant may make a claim for costs against the Council. Costs may be awarded where a party has behaved unreasonably, and this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be related either to the appeal process or the issues arising from the merits of the appeal and can include unreasonable refusal of planning permission, unjustified imposition of planning conditions, unreasonable issue of an enforcement notice or in relation to how the application or enforcement case was handled. A full or partial costs award may be made.

The Council may also seek costs from appellants if they have acted unreasonably and caused the Council unnecessary expense. For example, the Council may seek costs if an appellant pursues an appeal where it was clear that there was no chance of success. Costs may also be claimed if an appellant pulls out of an appeal at a late stage, where the Council has incurred significant expense in preparatory work.

In addition, an award of costs may be made by an Inspector or the Secretary of State on their own initiative if they consider that one party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs against that party.

Advice on appeals and award of costs is available in the Appeals section of the Government's Planning Practice Guidance.

9. LIST OF CONTACTS

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Appendix 1- Background to Planning

Development

Planning permission is needed for “development”. Development is defined in the Planning Acts as: 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.' Thus 'development' can take the form of either physical works to a building or land, or a change of use of the building or land.

While this definition may seem relatively straightforward there are areas of uncertainty and the legislation gives further guidance. In particular, it makes clear that only works that affect the external appearance of a building require planning permission. Also, it allows people to use their homes for any purpose connected with its residential use. For example, this allows people to work from their homes without obtaining planning permission, but certain restrictions apply. The residential unit must not be divided into more than one unit and the main residential purpose and character of the dwelling must be maintained. Until 2014 demolition in a conservation area required conservation area consent, but this has been abolished, and demolition is dealt with by the planning permission.

If someone is unsure whether their proposal constitutes development, they can apply to the Council for a formal determination. This is known as a Certificate of Lawfulness.

To simplify the process further, the law allows a whole range of minor development to take place without the need for planning permission. These exemptions from planning control are set out in the General Permitted Development Order 1995, which sets out categories of ‘permitted development’, and the Use Classes Order 1987. Both orders have been amended on several occasions since they were originally published.

Permitted Development

Some types of development may already be permitted nationally, and for these there is no need to apply for planning permission. Permitted development rights are, however, typically subject to conditions and limitations that control development impacts. If development proposed does not meet with the conditions and limitations of permitted development, then it is necessary to apply to the local planning authority for planning permission. We cannot apply the Council’s adopted planning policies in dealing with certificates of lawfulness, it is a straight forward assessment is the scheme lawful or not.

Several new permitted development rights have been introduced in recent years to boost housing supply and enable appropriate development to take place more quickly. The Government introduced in May 2013 a number of prior approvals, these include larger householder extensions affording greater freedom for homeowners to improve and extend their properties without the need to apply for full planning permission (subject to appropriate engagement with neighbours).The Government also introduced the prior approval regime which covers a variety of different changes of use for example change of use of offices to residential use, shops/restaurants to residential use ,and temporary changes of use for a 2 year period.

The Government in the Chancellors Budget speech announced further changes to prior approval regime . An update of the most recent changes which came into force at the end of May 2019 have been circulated to Members. These changes made the larger householder extensions permanent, extending temporary changes of use from 2 to 3 years and now

includes some Class D1 uses and removing the permitted development rights for telephone boxes.

There is growing opposition to the prior approval rights which allow offices to be converted into flats, as such schemes do not have to provide affordable housing, standard of accommodation and anti-social behaviour. Westminster has an Article 4 that covers offices inside CAZ which removes these permitted development rights.

Article 4 Directions
An Article 4 Direction is a direction under Article 4 of the General Permitted Development Order which enables the local planning authority to withdraw specified permitted development rights across a defined area. This would bring these types of development within the control of the planning process. There are several Article 4 Directions in place in Westminster – for example to limit basement development, prevent the change of use of shops (A1 Use Class) to financial and professional services (A2 Use Class) in the Core Central Activities Zone, prevent changes of use from offices to residential in CAZ and minor alterations in certain conservation areas/streets such as the Queen's Park Estate.

Use Classes
The Use Class Order defines several groups of uses that are sufficiently similar in terms of their impact on the local environment that a change of use within a class, although it may be significant, does not need planning permission. The major Use Classes which are commonly found in Westminster are:

A1	SHOPS	*Chemist, grocer, bakers, butcher, hairdresser, ticket/travel agency, off licence, cold food take-away (e.g. a sandwich shop), post office.*
A2	FINANCIAL AND PROFESSIONAL SERVICES	*Bank, building society, estate agent, betting shop.*
A3	RESTAURANTS AND CAFÉS	*Businesses where the primary purpose is sale of food and drink for consumption on the premises.*
A4	DRINKING ESTABLISHMENTS	*Pubs, bars, wine bars.*
A5	HOT FOOD TAKEAWAYS	*Businesses where the primary purpose is sale of hot food for consumption off the premises.*
B1	BUSINESS	*Office, light industrial, hi-tech studio.*
B2	GENERAL INDUSTRIAL	*General industrial processes*
B8	STORAGE & DISTRIBUTION	*Warehousing or other storage, premises where goods are stored prior to distribution.*
C1	HOTELS	*Hotels, boarding houses but not hostels.*
C2	RESIDENTIAL INSTITUTIONS	*Nursing home, residential school, hospital.*
C3	DWELLING HOUSES	*Flats, houses, or 6 people living together as a single household (including a household where care is provided for residents).*
D1	NON-RESIDENTIAL INSTITUTIONS	*Medical/health centre, crèche, day nursery, school, museum, library, exhibition hall, public worship*

D2	ASSEMBLY AND LEISURE	*Cinema, concert hall, bingo hall, dance hall, swimming bath, gymnasium.*

There are also certain uses that are specifically excluded from any use class, such as casinos, night clubs, hostels, theatres, amusement arcades, petrol stations and car showrooms. These are known as ***sui generis*** uses. Wholesale showrooms (such as the clothing showrooms in East Marylebone) are also treated as *sui generis* uses.

As already mentioned the Permitted Development Order allows some changes of use without the need for planning permission. For *sui generis* uses, there are no permitted development rights.

Many activities do not fall neatly into a Use Class. For example, there is a 'grey area' between a Class A1 sandwich bar and a Class A3 café. To fall within Class A1, the sandwich bar must sell primarily cold food for consumption off the premises. However, a limited proportion of hot food sales, or a few tables and chairs on the premises would not necessarily take the use outside the retail Use Class. There are no hard and fast rules determining where to draw the line deciding whether a use is either A1 or A3 or indeed a mixed use falling into neither class. Many other catering activities will be a mix of Classes A3, A4 and A5. Each proposal of this kind needs careful assessment, considering whether one activity is very dominant, with other activities being 'ancillary', or whether the use is a mixed one falling outside any use class.

Thus, it is not always possible to control a change of use that may be viewed as undesirable. For example, the change of a local food shop or a post office to a coffee shop (as all uses fall within Class A1).

Certificates of Lawful Development

There are three types of Certificates of Lawful Development. The first refers to development that has already been carried out without planning permission. A Certificate of Lawfulness of Existing Development must be granted when, by the length of time the development has existed, it has become lawful. That is, the planning merits cannot be considered. In the case of building works or residential uses, the development becomes lawful after four years. For all other uses, the time is ten years

In certain circumstances, it may not be clear whether planning permission is required for a development. The Certificate of Lawfulness of Proposed Development enables an applicant to seek a formal view on the need for making a planning application. The certificate would be granted where the development proposed does not require planning permission. Again, there is no assessment of the merit of the development proposed: the procedure is restricted to assessing only whether permission is required.

There is also a certificate of lawfulness which relates to very minor works to listed buildings which will not affect the character of the listed building as a building of special architectural and historic interest and therefore does not require consent and not liable to any enforcement action.

Works to Trees

Consent is required for any works to trees covered by a Tree Preservation Order (TPO). In conservation areas, 6 weeks' notice must be given to a local authority before works to

trees are undertaken, thus giving the City Council the opportunity to consider making a TPO.

Neighbourhood Plans

There is significant flexibility in what neighbourhood plans can include – they can involve, for example, just a few policies on design or retail uses or they can be comprehensive plans incorporating a diverse range of policies and site allocations for housing or other development. But they must relate to land use and must be consistent with strategic policies in the local plan.

All neighbourhood plans, and orders are subject to an independent examination and a vote by the local community in a referendum. Only a neighbourhood plan or order that have been found to fit appropriately with local strategic and national policies and complying with the detailed legal conditions in the Localism Act 2011 and supporting regulations may be put to a referendum. Neighbourhoods with a substantial number of businesses (as many of ours do) are designated as "business areas"; here plans are subject to referendum among businesses as well as residents.

When a neighbourhood plan has passed examination, achieved successful local support through referendum and is then formally 'made' by the Local Planning Authority, it will form part of the statutory 'development plan' which is used by the local planning authority in deciding planning applications. This status, the community-led nature of neighbourhood planning and extra funding that the community has a degree of influence over through the community infrastructure levy (see below) are real incentives for communities to get involved.

Community Infrastructure Levy

The Community Infrastructure Levy (CIL) is a charge on development to help fund infrastructure which the council, local community and neighbourhoods require to help accommodate new growth from development.

The CIL charge is based on the size, location and type of development (although there are exemptions granted for certain categories of development). Westminster's CIL Charging Schedule is shown below; rates are per square metre for developments where there is an increase of new build floorspace of 100 sq.m or more:

Use	**Area**		
	Prime	**Core**	**Fringe**
Residential (including all residential 'C' use classes)	£550	£400	£200
Commercial (offices; hotels, nightclubs and casinos; retail (all 'A' use classes and sui generis retail)	£200	£150	£50
All other uses	Nil		

The Council has a detailed governance arrangement to determine how monies collected under CIL will be spent. Under the CIL Regulations there are requirements to divide CIL revenue into "portions":

Portion	Percentage of receipts	Process
City CIL Strategic Portion	70 - 80%	Spend decided by Council according to its strategic infrastructure priorities. Spend can be anywhere within Westminster - or outside – providing the infrastructure funded is required to support development in Westminster.
Neighbourhood Portion	Currently 15% of CIL collected in respect of development in each neighbourhood capped at £100 per council tax dwelling. This increases to 25% (uncapped) in places **where a neighbourhood plan is in place.**	Queen's Park: neighbourhood portion passed to the Community Council who spend it. Elsewhere: funding **retained by the Council** and spent by it **in agreement** with the neighbourhood communities in which development paying a CIL has taken place.
CIL Administrative Expenses Portion	5% of CIL collected	Spend applied to costs of administrative expenses for collection and enforcement in line with legal restrictions on the use of this funding. (NB 4% of the Mayoral CIL collected by the council can also be retained for this purpose).

The Mayor's Community Infrastructure Levy was introduced in 2012 to help finance the Elizabeth line (formerly Crossrail) and is a charge of £80 per square metre on qualifying development in Westminster. Medical, education and affordable housing floorspace is exempt from the Mayoral CIL, all other net floorspace is liable.

Liability to pay CIL arises when planning permission is granted – at which point the council issues a "liability notice" (for this reason the final amount payable is not formally worked out until after permission is granted; we have a CIL Calculator on the council website to help developers work out how much they are likely to have to pay). It is paid within 90 days of development commencing, when a "demand notice" is issued.

The amount of money raised by CIL per year will fluctuate depending on the development cycle/economic conditions, and it is paid on commencement, and not on the grant of permission.