



Report to Planning Committee 8 December 2022

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Report Summary	
Report Title	<i>Protocol for Members on Dealing with Planning Matters</i>
Purpose of Report	<i>To seek Members' approval of an amendment to the Protocol for Members on Dealing with Planning Matters following recent case law</i>
Recommendation	<i>That Planning Committee adopt the amended Protocol for Members on Dealing with Planning Matters</i>

1.0 Background

Members adopted, in June 2022 the Protocol for Members on Dealing with Planning Matters following the change in the governance structure. Recent case law published has highlighted that it would be beneficial to provide greater clarity, in order to minimise the risk of any legal challenge, in relation to decisions made by Members of the Planning Committee.

2.0 Proposal/Options Considered and Reasons for Recommendation

Section 15: Voting at Committee of the Protocol sets out when a member is able to vote on an agenda item:

“15.1 Any member who is not present throughout the whole of the presentation and debate on any item shall not be entitled to vote on the matter.”

Recent case law R (on the application of The Spitalfields Historic Building Trust) v London Borough of Tower Hamlets, Date: 6 September 2022, [2022] EWHC 2262 (Admin) was a challenge against the London Borough of Tower of Hamlets (LBTH) by an interested party that the Council had erred in its decision making at their planning committee. A summary of the case is a report was presented to the committee in April 2021 at which time it deferred. The application was re-presented in September 2021 by which time a new Constitution had been adopted as well as a change in the membership of the committee. LBTH's Constitution was such that only those members who were present at the April 2021 meeting were able to vote at the September meeting.

The case was dismissed, and the Court found the power prohibiting members from the vote on the deferred application had been lawfully constructed in Council's Constitution and fell within the Local Authority's power under Paragraph 42 of Schedule 12 to the Local Government Act 1972.

However, the case highlights the need for clarity when exercising the discretion to regulate proceedings and business.

Members will be aware that each council adopts its own constitution, protocols and delegation arrangements. NSDCs is different in that it only relates to members needing to be present at the meeting on the day a decision is made. However, to provide clarity for all, the proposed change is recommended:

15.1 Any member who is not present throughout the whole of the presentation and debate on any item shall not be entitled to vote on the matter. For clarity, the '*whole of the presentation and debate*' comprises only the presentation and debate on the day the application is determined. It does not include any previous presentation and/or debate of the item for either referrals or resolutions to approve subject to '...' which might include completion of a s106 planning obligation, consultations or notifications to expire or other matter.

In addition, it has been noted that the paragraph numbering of the document adopted in June are, towards the end of the document, mistyped. This is therefore suggested is corrected as well.

3.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

Background Papers and Published Documents

Appendix 1 –Protocol for Members on Dealing with Planning Matters. Published on-line.