

# Development Management Guidance for Parish, Town and City Councils

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## Introduction

This guide has been published to help the Town, City and Parish Councils in Somerset to play their part in the statutory planning process as it deals with planning and other related applications<sup>1</sup>. It explains the Development Management process in respect of the determination of applications made to Somerset Council and provides information of how planning decisions are made.

### *Parish Meetings*

Somerset also includes a number of Parish Meetings which are not part of the Council's scheme of delegation and therefore any comments contrary to the Officer recommendation do not trigger the Committee referral process, explained further below. In this case the Divisional Member can request that the application is referred under the scheme of delegation to Planning Committee. Please contact the Planning Office if you require further information on this.

## Parish Council Consultation and Notification

Somerset Council will either consult or notify the Parish Council of the receipt of a valid application.

Parish Councils<sup>2</sup> will be consulted on the following applications – your comments on these applications will potentially trigger a referral to Planning Committee:

- Planning permission (outline and full)
- Advertisement consent
- Listed building consent
- Application for planning permission for relevant demolition in a conservation area
- Reserved matters approval following outline permission
- Variation/removal of conditions (S.73 Applications)
- Permission in Principle (PIP)\*

The Parish Council consultation letter will include details of the application, the name and email address of the Case Officer as well as a date by which any comments should be returned.

\* Parish Council's will be consulted on Permission in Principle applications and all comments will be taken into consideration, however as the decision is delegated to Officers, comments will not trigger a referral to Committee.

Parish Councils will be notified of the following applications, however as these applications are delegated to Officers means they would not be referred to Planning Committee:

- Certificates of Lawfulness Existing or Proposed
- Prior Approval/Prior Notification – all types
- Approval of details reserved by condition
- Any applications for works to trees

The Parish Council notification will also include details of the application, the name and email address of the Officer dealing with it. However please note that, for some of these applications, due to the tight timescale within which a decision needs to be made, and the deemed approval status of some if the timescale is not met, a decision may need to be made soon after the notification is sent.

<sup>1</sup> For the purposes of this document reference to planning applications includes other related applications including those relating to advertisements and to listed buildings.

<sup>2</sup> Reference to Parish Council's includes Town and City Council's but excludes Parish Meetings.

## The Purpose of Consulting the Parish Council

There are a number of mutual advantages to the consultation process:

- It gives the Parish Council the opportunity to be aware of what development may be undertaken in their area.
- The development may be of particular significance locally and the views of the Parish Council are a helpful indication of local reactions.
- The Parish Council, with its local knowledge, can alert the Local Planning Authority to any anomalies in the application which would not be readily apparent on a site visit (e.g. local people may have important evidence of how a particular site is used, hours of working, etc.).
- It enables the Parish Council to let local people know about development proposals.
- It enables the Parish Council to notify the Local Planning Authority of suspected unauthorised development using the Council's procedures.

The Council's website also allows Parish Councils and the public to view the applications, consultee responses and comments and also offers the facility to submit comments electronically.

## Parish Council Comments on Applications

Where the Parish Council is consulted on an application, the application details, including all plans and reports, will be available to view on the Council's website – a link will be provided in the letter. The details of how to return the Parish Council comments will also be provided in the letter.

Parish Councils need to either:

- **Support or Object; and provide material planning reasons;** or
- Confirm **comments only** but this would not trigger the referral process

Further information on what comprises material planning reasons can be found below.

Parish Councils need to respond by the target date set out in consultation letter – usually 21 days or 14 days. You can request an extension to the target date, which will be agreed where possible however you should get in touch with the Case Officer as soon as possible to agree this.

A template response for Parish Councils to use is provided at Annex B and the Clerk to the Parish Council will be provided with a word copy to complete and submit to the Council if they so wish.

## How Parish Representations are taken into Account

The Local Planning Authority will take into account the representations of the Parish Council. However, this does not mean that the Local Planning Authority will necessarily decide an application completely in accordance with the Parish views. It is not the role of a parish to duplicate or replace the role of the Local Planning Authority. There are several reasons for this:

- The Local Planning Authority can only take into account material planning considerations. If the comments of Parish Councils do not relate to legitimate planning issues, they must be set aside.
- The Local Planning Authority will receive advice from their professional officers on all matters which should be taken into account in making a decision. The Parish Council will not normally receive such comprehensive advice.

- The Local Planning Authority must determine applications in accordance with the development plan unless material considerations indicate otherwise. As consultation responses are material considerations, the Local Planning Authority takes into account the representations of others, as well as the Parish, especially those from statutory consultees (e.g. the Environment Agency or Natural England), other officers of the Council, neighbours, and the applicant. It must also take into account any relevant planning history of the site, including previous appeal decisions, and various policy considerations. Although the Parish will not have full information on the content of these other representations they can view the progress of an application, plans, correspondence, and consultation replies via the Planning website.

In reaching a decision the Local Planning Authority is required to weigh up all the views made on an application.

This means that while the Local Planning Authority takes into account the Parish comments, it will have a more rounded picture to consider. The comments of a Parish, when weighed in the balance, may have insufficient weight to enable the application to be determined with the wishes of the Parish, whether to approve or to refuse.

In addition, there are restrictions on the way in which a Local Planning Authority is entitled by law to deal with applications.

## The Council's Scheme of Delegation

The Council's scheme of delegation and terms of reference can be read in full on the Council's website [Constitution \(somerset.gov.uk\)](http://www.somerset.gov.uk). However with specific regard to comments received from the Parish Council the Council's Constitution at para 8.8 and 8.9 of Part D8 – Planning Committees Terms of Reference states:

### 8.8 Referral by Parish, Town and City Councils

- a. Within 21 days of being notified of a Planning Application, a Parish, Town or City Council must notify the Planning Service in writing, that:
  - i They wish to refer the Planning Application to the relevant Planning Committee by either supporting or objecting to the application and;
  - ii Provide material planning reasons for the referral
- b. If the Officer recommendation is ultimately in agreement with the Parish, Town or City Council's view, the decision will be delegated to Officers.
- c. If the Officer recommendation is ultimately not in agreement with the Parish, Town or City Council view AND the application is classified as a major application it will automatically be referred to the area-based Planning Committee.
- d. For all other applications, if the Officer recommendation is ultimately not in agreement with the Parish, Town or City Council view then the Strategic Director (Climate and Place) will refer the application to the Chair and/or Vice Chair of the area-based Planning Committee. The Chair and/or Vice Chair, in consultation (where possible) with the Divisional Members, will determine whether the application should be referred to the area-based Planning Committee for a decision, or whether the exercise of delegated powers is appropriate, providing material planning reasons for this decision.
- e. A Parish, Town or City Council may request an extension of the time limit in which they must notify the Planning Service that they wish to refer a Planning Application in order

to allow for consideration at the next meeting of the Parish, Town or City Council (or its Planning Committee). Such a request shall be granted where possible.

- f. On referral to Chair and/or Vice Chair, the Divisional Member will receive a copy of the officer report and will be advised of the decision as to whether it stands referred.

#### 8.9 Referral by Parish, Town and City Councils (post 21 days):

- a. As a direct result of substantial changes and re-notification of an application, the Parish, Town or City Council will be given a further 14 days, from the date of re-notification, to request that the application is referred to the relevant Planning Committee by notifying the Planning Service in writing stating whether they support or object, with material planning reasons.
- b. If the Officer recommendation is ultimately in agreement with the Parish, Town or City Council view, the decision will be delegated to Officers.
- c. If the Officer recommendation is ultimately not in agreement with the Parish, Town or City Council view AND the application is classified as a major application it will automatically be referred to the area-based Planning Committee for a decision.
- d. For all other applications, if the Officer recommendation is not in agreement with the Parish, Town or Council view, the Executive Director (Climate and Place) will refer the application to the Chair and/or Vice-Chair of the relevant area-based Planning Committee. The Chair and/or Vice Chair, in consultation (where possible) with the Divisional Members will determine whether the application should be referred to the area-based Planning Committee for a decision, or whether the exercise of delegated powers is appropriate, providing material planning reasons for this decision.
- e. A Parish, Town or City Council may request an extension of the time limit in which they must notify the Planning Service that they wish to refer a Planning Application in order to allow for consideration at the next meeting of the Parish, Town or City Council (or its Planning Committee). Such a request shall be granted where possible.
- f. On referral to Chair and/or Vice Chair, the Divisional Members will receive a copy of the officer report and will be advised of the decision as to whether it stands referred after.

It is acknowledged that this sounds very complicated so a flow chart of the process can be found at Annex C to assist.

#### *Parish Meetings*

As outlined above, Parish Meetings are not part of the Council's scheme of delegation and do not form part of the above process. Parish Meetings must instead liaise directly with their Divisional Member to request that the application is referred under the scheme of delegation to Planning Board.

## Alterations and Amendments to Current Applications and Permissions

### *Current applications*

Not all amendments to a current planning application will require a re-notification of the application to the Parish Council. Each time a formal re-notification is carried out, the decision is put back two to three weeks and the Council generally only has eight weeks (5, 13 or 16 weeks for some schemes) to determine an application unless an extension of time is agreed by the applicant. Failing this the applicant has a right of appeal against the Council's 'non-determination' of the application within the statutory period.

However, the Local Planning Authority may consider re-notifying where there is a significant effect on third parties, or where the amendment is significant and outside the terms of the original application.

### *Existing Permissions*

There is also a statutory procedure for dealing with 'non-material amendments' to extant planning permissions. Such changes, that raise no issues or considerations which were not raised when the original proposal was approved, are dealt with by the Local Planning Authority under delegated powers. Anything which is regarded as a 'minor material amendment' will have to be the subject of an application to vary a condition on the original planning permission and undergo the normal round of consultation with the Parish. If the amendments are considered to be significant then a new application for planning permission may be required which, again, will result in a new Parish Council notification.

## The Processing of Applications

Somerset Council's procedures for dealing with planning applications are set out in Annex A – Processing of Applications.

## Determining Planning Applications

In reaching a decision on a planning application, the Local Planning Authority must follow a specific and objective decision making process as set out by Government.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise.

### *A plan-led system*

The planning system in England is plan-led, having regard to:

1. **National policy** – The National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG) etc.

For the Local Planning Authority this means that the NPPF must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. The NPPF is important but it does not change the statutory status of the local development plan (Local Plan) as the starting point for decision-making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate



otherwise. It is therefore highly desirable that the Local Planning Authority has an up-to-date plan in place so that robust local decisions can be made.

2. **Local policy** – the Development Plan is prepared by the Local Planning Authority.

Currently in Somerset the Development Plan comprises:

- Mendip Local Plan Part I: 2006-2029
- Mendip Local Plan Part II: Sites and Policies with post-JR revisions
- Sedgemoor Local Plan 2011-2032
- Taunton Deane Core Strategy 2011-2028
- Taunton Town Centre Area Action Plan
- Taunton Deane Site Allocations and Development Management Plan 2028
- Saved policies from the Taunton Deane Local Plan to 2011
- Taunton Deane Policies Map
- West Somerset Local Plan 2032
- Saved Policies from the West Somerset District Local Plan 2006
- South Somerset Local Plan 2006-2028
- Saved policies from the South Somerset Local Plan 1991 – 2011
- Somerset Minerals Plan to 2030
- Somerset Minerals Policies Map
- Somerset Waste Core Strategy to 2028

3. **Neighbourhood policies** – Neighbourhood Plans may be prepared by Parish/Town Councils and once they are ‘made’ they become part of the development plan. These can be found on the Council’s website here: [Neighbourhood Planning \(somerset.gov.uk\)](https://www.somerset.gov.uk/Neighbourhood-Planning)

*Sustainable development*

At the heart of the National Planning Policy Framework is a presumption in favour of „sustainable development“, which is to be seen as a golden thread running through both plan-making and decision-taking. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

*an economic role* – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

*a social role* – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and

*an environmental role* – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.



For the Local Planning Authority deciding applications this means (unless material considerations indicate otherwise):

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
  - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
  - *specific policies in this Framework (i.e. the national Framework) indicate development should be restricted.*

## Material Planning Considerations

In principle any consideration which relates to the use and development of land is capable of being a material planning consideration. The courts have held that whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances.

**Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest.** The considerations must also fairly and reasonably relate to the application concerned.

The Courts are the arbiters of what constitutes a material consideration. All the fundamental factors involved in land-use planning are included, such as the number, size, layout, siting, design and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighbourhood and the availability of infrastructure.

When Members of the Local Planning Authority are determining planning applications, they are acting in an administrative capacity; their decisions must be objective and made within the rules of the planning system. The planning merits of the application rather than the weight of public opinion, lead to the decision.

It is important to remember that the Council has to be able to defend a decision to refuse planning permission if an appeal is lodged. If the Council cannot justify its refusal, not only could the development be approved on appeal with less stringent conditions than the Council might have wished, but it could be faced with paying the appellant's costs if its own case or the reasons for refusal are considered to be weak or unreasonable. Where planning permission has been refused against the advice of officers or statutory consultees, Local Planning Authorities are expected to produce convincing evidence to support their decision to refuse; otherwise they will almost certainly be faced with costs. Even a relatively small case can run up costs of several thousand pounds and this risk of costs awards against it cannot be taken lightly.

The Council will also have in mind that the Local Government Ombudsman can find maladministration if proper administrative procedures are not followed.

## What are Material Planning Considerations?

Comments on a planning application can only be taken into account if they relate to material planning considerations. (See section on Determining Planning Applications) It is common for neighbours to object to applications for a variety of reasons. Parish Councils are encouraged to consider only relevant planning matters, and in this respect can also help their local residents understand the limits of development management.

Material planning considerations **DO** include the following:

- Local Planning Policy - Development Plans; Local Plans and Neighbourhood Plans listed above
- Local Supplementary Planning Documents produced by the Local Planning Authority (SPD)
- The Government's National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG).
- Effects on Listed Buildings, Conservation Areas and archaeology
- Effects on an Area of Outstanding Natural Beauty (also a statutory requirement)
- The economy, including job creation/retention.
- The environmental qualities of the surrounding area, the visual character of a street and the amenity.
- Design, size, layout and appearance of the development
- Highway safety, access, car parking and traffic generation
- Drainage and flood risk in identified areas at risk
- Living conditions such as Loss of light, overshadowing, privacy, noise and odour.
- Impact and loss of trees and landscape
- Biodiversity
- Noise, disturbance, smells – but not from construction.
- Disabled access
- Case law and previous planning decisions.
- Consideration of what could, otherwise, be undertaken as permitted development without the need for a specific permission.

*(The above list is not exhaustive)*

Issues that are not usually relevant will vary with each application. Although not exhaustive the courts have established that the following matters **DO NOT** constitute material planning considerations:

- Retrospective Applications. Development carried out without the necessary planning permission is generally not an offence and planning legislation makes provision for planning applications to be made retrospectively. If the development is acceptable on its merits, the Council cannot withhold permission simply to punish a pre-emptive development. However, if the development is unacceptable, the Local Planning Authority will need to consider commencing enforcement proceedings against the developer.
- Trade Objections. It is not the role of planning to interfere in matters of competition between businesses other than at strategic level, e.g. when the retail vitality of a town as a whole is threatened by an out of town retail park.
- Need. An applicant's motivations or future intentions are not for the planning system to consider. In principle the need for a development is not a material consideration with the exception of Agricultural Worker Dwellings where justification of need is material. The history or character of an application is also not material.
- Moral Objections. The planning system is not the place for moral judgements, for instance against betting shops, lottery kiosks or amusement arcades; although there may be genuine planning reasons for refusal such as noise and disturbance to adjoining residents resulting from the potential attraction of these establishments.
- Impact on Private Views. The loss of an attractive private view, e.g. when development is proposed on the opposite side of a road or to the rear of an objector's house. There is no right to a private view, however the loss of residential amenity more generally and matters such as overlooking or privacy at close quarters, or the impact wider public views, will be important considerations.
- Property values. The fear that an objector's house or property might be devalued.

- Land Ownership. The fact that an applicant does not own the land to which his application relates (as this could be overcome by agreement), or that an objector is a tenant of land where development is proposed.
- Covenants. Allegations that a proposal might affect private rights, e.g. restrictive covenants, property maintenance, party wall issues, private rights of way or boundary disputes. An example might be when an extension on a boundary is acceptable in planning terms but might be difficult to maintain. Such considerations are legal or contractual matters on which objectors, neighbours or applicants should consult their own solicitor or adviser.
- Land ownership. Including restrictive covenants or other private property rights including boundary and access disputes or maintenance. Whilst details of land ownership needs to be provided as part of an application for procedural reason, no other landownership rights are relevant in the consideration of application.
- Personal. Arguments of a personal kind relating to the associations, financial circumstances or ethnic origin of the applicant. The personal circumstances of applicants can only be taken into account in exceptional circumstances, for example where the applicant's proposed use of a building would be acceptable but the planning permission, if not made personal, would unacceptably allow more intensive uses in the same Use Class. The planning system does not exist to protect the private interests of one person against the activities of another. The material question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.
- Construction. Problems associated with the construction period of any works e.g. hours of work, noise, dust, construction vehicles – although this can be controlled by condition.
- Other legislation. Where there is separate legislation imposing controls e.g. Building Regulations, Fire Regulations or Health and Safety, etc., then these should not be duplicated by the Local Planning Authority.

Further considerations that are not material include:

- Opposition to the principle of development when this has been settled by an outline planning permission or appeal
- Previously made objections/representations regarding another site or application
- Factual misrepresentation of the proposal
- The extent of public support or opposition for a proposal alone

*(The above list is not exhaustive)*

## Listed Buildings and Conservation Areas

The Parish Council will be notified of applications for Listed Building Consent. Often these will be submitted in conjunction with a planning or advertisement application but in certain cases works that require Listed Building Consent will not require planning permission.

Different criteria apply to listed building applications from planning applications. The Local Planning Authority must consider the acceptability or otherwise of the works in terms of the character of the building as one of Special Architectural or Historic Interest.

The following matters are material considerations for applications for Listed Building Consent:

- Impact on historic fabric either through its loss or its reinstatement
- Impact on the historic plan form of the building
- Impact on the setting of the building

The following matters are not material considerations:

- Planning matters such as means of access, drainage or loss of daylight to a neighbouring property are not relevant to the character of the listed building.

For Conservation Areas, the Local Planning Authority has a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Unauthorised alterations to Listed Buildings are criminal offences.

## Planning Conditions and Obligations

When granting planning permission Local Planning Authorities can impose conditions where there is a clear land-use planning justification for doing so. The tests for conditions are set out in the Paragraph 55-56 of the National Planning Policy Framework and National Planning Practice Guidance and require that every condition must be:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

A planning obligation is secured via a legal agreement and the tests for these are set out in the Paragraph 57-58 of the National Planning Policy Framework, National Planning Practice Guidance and Regulation 122 of the Community Infrastructure Levy Regulations 2010 and require that an obligation must be:

1. Necessary to make the development acceptable in planning terms;
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development

One way of testing whether a particular condition is necessary is if planning permission would have to be refused if the condition were not imposed. Otherwise, such a condition would need special and precise justification.

Unless otherwise specified, a planning permission runs with the land. However, in exceptional circumstances, the personal circumstances of an occupier, personal hardship, or the difficulties of businesses which are of value to the welfare of the local community, may be material to the consideration of a planning application. In such circumstances, permission may be granted subject to a condition that it is personal to the applicant. However such arguments will seldom outweigh the more general planning considerations.

Where it is not possible to include in a planning condition matters that are necessary for a development to proceed, developers may seek to negotiate a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). Planning obligations should meet the same statutory tests set out in the National Planning Policy Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 above.

The use of planning obligations must be governed by the fundamental principle that planning permission must not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms. Planning obligations are only a material consideration to be taken into account when deciding whether to grant planning permission, and it is for Local Planning Authorities to decide what weight should be attached to a particular material consideration.

## How does the Council deal with an application?

It is important that a Parish appreciates the relationship between the Local Planning Authority and the applicant.

It is the applicant, not the Local Planning Authority, who decides what proposal to submit. The Local Planning Authority then has to determine that application on its merits, i.e. the appropriate development or use for the site.

Council Planning Officers also provide pre-application advice to applicants for a fee and may also negotiate amendments to a proposal during consideration of a formal application. It is important to understand that advice given by professional officers is given wholly without prejudice to any final decision by the Council as Local Planning Authority.

The Local Planning Authority would expect to approve an application if it accords with the Development Plan unless material considerations indicate otherwise. In some cases - for example, an application for an agricultural worker's dwelling house in open countryside - there will be a greater onus on the applicant/developer to prove a *need* for the development.

The Local Planning Authority has 8 weeks from the date of submission to determine most applications unless an extension of time is agreed by the applicant. For Prior Approvals many of the targets are 28 days, Permission in Principle the period is 5 weeks, major applications is 13 weeks and for applications requiring an Environmental Statement under the Environmental Impact Assessment Regulations it is 16 weeks, or a mutually agreed period between the applicant and the Planning Authority.

If a decision is not made in this time there is no deemed approval (except in some applications for prior approval), but the applicant then has the right of appeal to the Planning Inspectorate on the grounds of non-determination. Similarly if the application is refused an applicant has a right of appeal.

If an objection can be overcome by imposing a condition, that should be the appropriate course of action rather than a refusal. If the development would be acceptable without the conditions, then those conditions are unlikely to be regarded as reasonable if the applicant decided to appeal against them.

## Enforcement

The planning system in England operates to regulate development and the use of land which is in the public interest. The effective and proper enforcement of planning control is essential to protect the local environment and the interests of the residents, visitors and businesses from the harmful effects of unauthorised development.

Local Planning Authorities (LPA) have a discretionary power to take enforcement action where unauthorised development has taken place. Unauthorised development includes building works,

changes in the use of buildings or land, the appearance of buildings or land, advertisements, works to Listed Buildings, or works to trees that are protected.

The National Planning Policy Framework (NPPF) at para 59 states:

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control”.*

Somerset Council has adopted a Planning Enforcement Policy that sets out the Council’s approach to investigating unauthorised development and the decision-making process when deciding whether to take enforcement action. The Planning Enforcement Policy can be found on the website here: [Planning Enforcement Policy \(somerset.gov.uk\)](https://www.somerset.gov.uk/planning-enforcement-policy/)

The carrying out of development without planning permission is not ‘illegal’ unless the person undertaking the work has failed to comply with an enforcement notice<sup>3</sup>: there is always a judgement to be made as to whether the unauthorised activity causes such harm that it is ‘expedient’ to take formal action to deal with it.

In relation to development carried out at variance with a planning permission the same judgement must be made. Alternative schemes may well be equally acceptable but should have the benefit of planning permission.

There is a limited range of circumstances where rapid action is possible. These might include work to protected trees or a breach of a planning condition. In the latter case a Breach of Condition Notice can be used, against which there is no right of appeal. However, such a notice should only be used in respect of a clear breach. In exceptional circumstances where a breach of planning control is having a serious adverse effect on an area a Stop Notice or Injunction may be possible.

In some cases, the appropriate action is the service of an Enforcement Notice. This will state the alleged breach of control and set a reasonable period within which the breach is to be remedied. There is a right of appeal to the Planning Inspectorate, in the same way as the refusal of, or imposition of conditions on, a planning application. The considerations which come into play are similar and the timescale is similar to that for an appeal on a planning application, i.e. several months. Assuming that the Planning Inspector upholds the Notice, there is still the possibility that it will not be complied with. This may then result in the need for appropriate action through the courts.

The Local Planning Authority is not able to monitor all completed developments and it must be borne in mind that if a breach of control has taken place, but there is no harm to the public interest, then it is not normally appropriate to take action.

It is therefore quite possible for development to be neither authorised, nor the subject of enforcement action.

Many breaches of control are successfully dealt with informally through the co-operation of the owner or developer.

<sup>3</sup> Undertaking works to preserved trees to listed buildings are criminal offences.



## Advertisements

A wide range of advertisements may be displayed without the consent of the Local Planning Authority i.e. they have 'deemed consent'. Other advertisements will require 'express consent' under the Advertisement Regulations. An Authority can serve a 'Discontinuance Notice' on deemed consent advertisements (a form of permitted development for advertisements) in the interests of amenity or safety but this is subject to appeal. Advertisements erected without consent also can be the subject of prosecution.

## Prior Approval or Prior Notification Applications

The 'Prior Approval' procedure requires the Local Planning Authority to be consulted on a range of developments which are 'permitted development' i.e. do not need planning permission as such.

Historically this procedure applied to a very limited range of proposals such as some agricultural or forestry buildings and operations. However, over the last few years 'prior approval' procedures have been significantly expanded and continue to be expanded to cover a much greater range of developments and changes of use. These new relaxations are subject to different assessment criteria depending on the case.

While these uses or developments are subject to the 'prior approval' procedures, the principle of the development is already decided; however the applicant is required to notify the Local Planning Authority which then has either 28 days or 56 days - subject to the type of notification - to indicate whether it wishes to approve, refuse or amend the details of the development.

These applications are always dealt with under delegated powers in view of the short timescale for determination and therefore the opportunities for interaction with the Parish or the public are limited. Some, but by no means all of these 'prior notifications', do however require some form of public advertisement/notification.

## Trees and Hedgerows

Specific protection of trees can be undertaken by the Local Planning Authority by the imposition of Tree Preservation Orders in cases where individual trees or groups of trees make a significant visual contribution to their local surroundings. It is an offence to prune, fell, wilfully damage or wilfully destroy a protected tree without permission from the Local Planning Authority. A formal application is required to carry out works to a protected tree.

There are a number of exemptions from the requirement to obtain consent or notify. These include cases where a tree has died or has become dangerous as well as the removal of dead branches from a living tree. Anyone proposing to cut down a tree under this exemption has to give the Local Authority five days written notice except in case of an urgent risk to safety. If a Local Planning Authority is aware that unauthorised work has been carried out, it may prosecute. When the Local Planning Authority grants consent to the removal of a tree or it is removed because it is considered dead or dangerous, the owner can be required to plant a replacement tree by way of condition.

Trees within Conservation Areas are also protected in a limited way by the requirement that before carrying out any work to a tree, 6 weeks notice of this intention must be given to the Local Planning Authority. The purpose of this requirement is to give the authority the opportunity to make a Tree Preservation Order if this is appropriate. It is an offence to carry out work to protected trees without following the above procedures.



Local authorities have a duty to ensure that adequate provision is made for the preservation and planting of trees when granting planning permission for developments by imposing conditions and making Tree Preservation Orders.

In the 1990s The Hedgerow Regulations were introduced to protect countryside hedgerows on or next to agricultural land, land used for keeping horses, common land, village greens, SSSIs, nature reserves, Public Rights of Way. Subject to certain criteria, including minimum length exclusion, it is now necessary to give notice to the Local Planning Authority prior to the removal of such hedgerows.

## Propriety

The members of the Local Planning Authority (Councillors or Divisional Members) are elected to represent the interests of the whole community in planning matters. When determining planning applications they must take into account material planning considerations only. While this can include views expressed on relevant planning matters, local opposition or indeed support for a particular proposal is not in itself a ground for refusing or granting planning permission. All decisions must be founded upon valid material planning reasons.

Somerset Council promotes high standards of conduct by Councillors and the Council's Monitoring Officer is responsible for receiving allegations of breaches of local codes and deciding whether they should be accepted for investigation.

## Private Interests

The planning system does not exist to protect the private interests of one person against the activities of another; although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

## Other Legislation

Non-planning legislation may place statutory requirements on planning authorities, or may set out controls which need to be taken into account (for example, environmental legislation, highways or water resources legislation). Planning authorities, in exercising their functions, also need to have regard to the general requirements of other legislation, in particular:

- The Equality Act 2010 has replaced previous legislation dealing with discrimination including the Race Relations Act 1976, the Sex Discrimination Act 1975 the Disability Discrimination Act 1995 and has placed on public bodies and organisations a duty to have due regard to eliminating discrimination or harassment prohibited under the Act, to advance equality of opportunity between people who share a relevant characteristic and those who don't, and to foster good relations between people who share a relevant protected characteristic and those who don't, when carrying out their public functions. The relevant protected characteristics which need to be considered when delivering policies and services are:

age;  
gender reassignment;  
being married or in a civil partnership;

being pregnant or on maternity leave;  
disability;  
race including colour, nationality, ethnic or national origin;  
religion or belief;  
sex;  
sexual orientation.

Where these are relevant to planning applications and to any exercise of planning powers by a public body they should be taken into account.

- The Human Rights Act 1998, which incorporated provisions of the European Convention on Human Rights (ECHR) into UK law. The general purpose of the ECHR is to protect human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society. It sets out the basic rights of every person together with the limitations placed on these rights in order to protect the rights of others and of the wider community. The specific Articles of the ECHR relevant to planning include Article 6 (Right to a fair and public hearing), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

## Useful websites and links:

Somerset Planning Service – [Planning, buildings and land \(somerset.gov.uk\)](https://www.somerset.gov.uk/planning-buildings-land)  
(inc Planning Policy)

Planning Portal - [www.planningportal.co.uk](http://www.planningportal.co.uk)

National Planning Policy Framework: [www.gov.uk/government/publications/national-planning-policy-framework](https://www.gov.uk/government/publications/national-planning-policy-framework)

National Planning Practice Guidance: [www.gov.uk/government/collections/planning-practice-guidance](https://www.gov.uk/government/collections/planning-practice-guidance)

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## The Processing Of Applications

### Validation

All applications are checked that they are valid initially by the Council's Planning Support Teams. Applications require the correct fee, satisfactory drawings and any other appropriate information. Most applications are submitted electronically through the Planning Portal with information uploaded automatically into the Council's back office computer system.

### Public access to applications

Parish Councils, Councillors and the general public can view application files electronically via the Council's website where the plans, forms, supporting information, correspondence, consultation replies, neighbour comments, etc are available. This information is available 7 days a week. Access to this information is also possible during the normal working hours at the Council offices and all Local Libraries.

### Decisions

Decisions on planning and other related applications are made either by the Strategic Planning Committee or one of the area-based Planning Committees or under powers delegated to the Officers of the Planning Department.

#### *Planning Committee*

The Council's Planning Committees comprise elected Members of the Council and their role is to determine those applications not considered under the delegated authority to Officers. Generally the Planning Committees determines the more major, complex or controversial planning applications although major applications by the Council itself, or relating to Council-owned land, or any application made by a serving Council Officer or Councillor or a close relative must be considered by Committee.

Parish Councils are able to speak for or against an application in their Parish at Planning Committee – you are allowed 3 minutes.

You cannot present documents in any form to the Members at the meeting – this includes photographs and presentations (including Powerpoint presentations).

Full details on the Planning Committees, including the dates of the meeting, Agendas and supporting information can be found on the Council's website here: [Committee structure - Modern Council \(somerset.gov.uk\)](#) Further information on how the Planning Committees work and how to register to speak can also be found within the Planning Committee Guidance Notes on the website but these are also provided at Annex D below.

#### *Delegation*

Under the Council's scheme of delegation and terms of reference within the Constitution, applications are able to be determined at planning officer level on a daily basis once the relevant consultation periods have expired. Delegated decisions normally comprise about 96% of all decisions taken by the Local Planning Authority and will include most of the uncontroversial or

small-scale applications. Delegated authority can also extend to the major schemes but delegated decisions occur only where they are in line with the constitution.

Once a decision is made a copy of the Officer's report will be available on the Council's website. The report will provide a comprehensive, but proportionate, explanation of the issues that have been considered and how the decision has been reached.

The decision may be contrary to your Parish Council's recommendation, and whilst we understand how disappointing this can be, the report will give further information as to why that contrary view was taken.

#### *Availability of decisions*

Once a decision is made by the Local Planning Authority it will be made publicly available on the Council's website.

## Parish Council Consultation Response Template

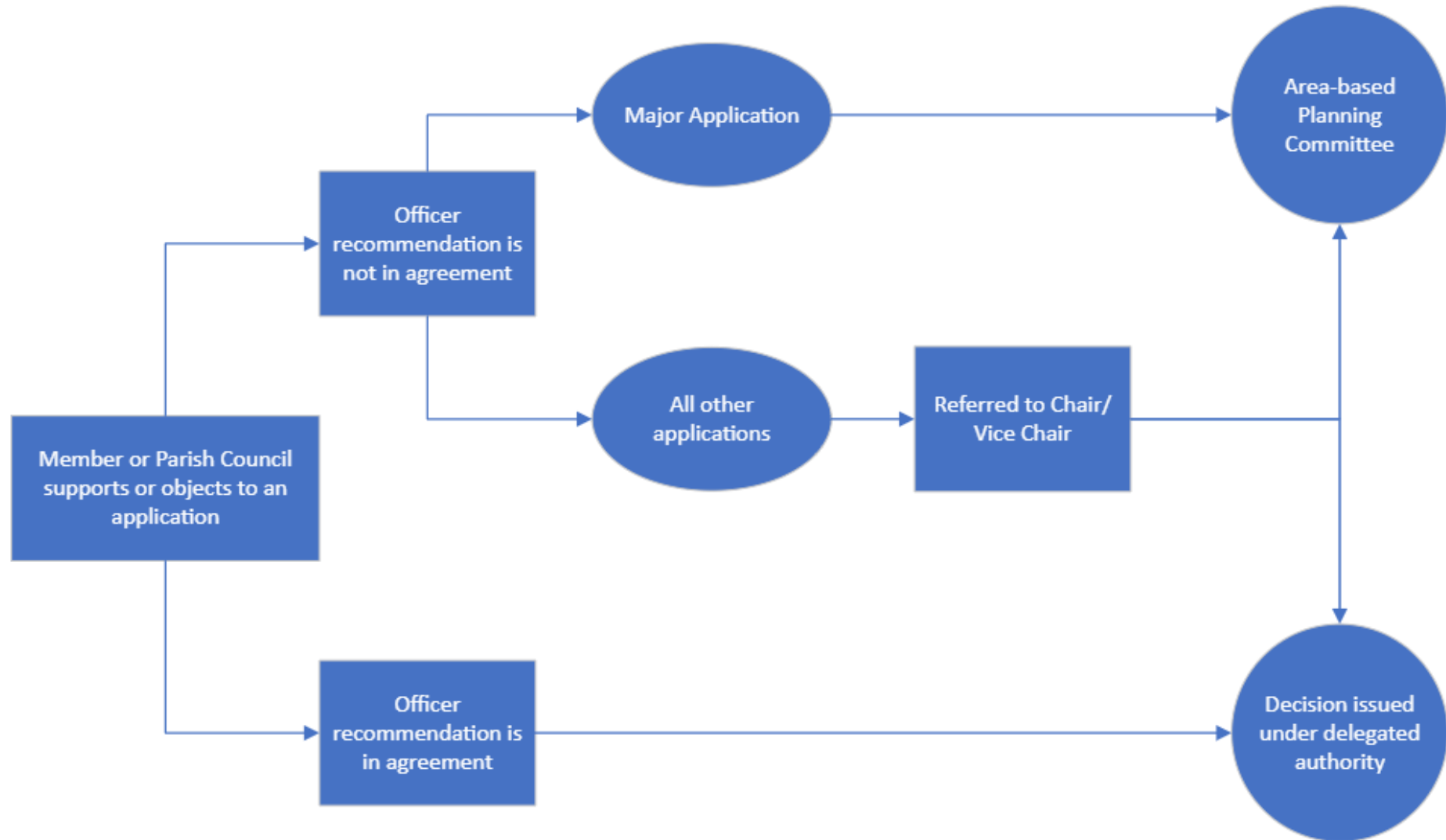
### (Insert name of Parish/Town/City Council) PARISH COUNCIL COMMENTS

Application Ref No:	
Address:	
Date of response:	

<b>1. Support the granting of permission</b>	<input type="checkbox"/>
Please explain below the main grounds on which you support the proposal:	
<b>2. Object to the granting of permission</b>	<input type="checkbox"/>
Please explain below the main grounds on which you object to the proposal:	

Material Considerations	Explanation of Grounds
1. Overlooking, loss of privacy or overbearing/overshadowing nature of proposal	
2. Design & appearance, impact on public visual amenity	
3. Layout & density of building	
4. Effect on listed buildings and/or conservation areas	
5. Loss of trees or ecological habitats	
6. Inadequate parking and/or servicing areas	
7. Access, highways safety or traffic generation	
8. Noise, smells or disturbance from the scheme	
9. Flood Risk	
10. Other reason – please explain	
<b>3. Comments only</b>	<input type="checkbox"/>
General Observations:	

## Flow Chart of Referral to Committee Process



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## Planning Committee Guidance

# Planning Committee Guidance For Somerset Council

Telephone: Customer Services 0300 123 3335

Visit our Website at [www.Somerset.gov.uk](http://www.Somerset.gov.uk)

*Members of the public are welcome at all meetings of the Planning Committee*

*This leaflet explains the format of the meetings and how you can have your say.*

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### What are the Planning Committees?

The Council has a Strategic Planning Committee and four area-based Planning Committees which collectively determine planning applications, including Waste and Minerals, across the Somerset Council local government area:

- Planning North (covering the former Sedgemoor District Council area)
- Planning East (covering the former Mendip District Council area),
- Planning South (covering the former South Somerset District Council area)
- Planning West (covering the former Somerset West & Taunton District Council area.)

The Planning Committees each consist of 13 elected Members from across the County. The majority of applications dealt with by Planning Committee will be at the relevant area-based Planning Committee.

There is also a sub-Committee of the Executive called the Planning Policy Sub-Committee. This consists of Executive/Cabinet members. This has been established to progress the Local Plan and other policy documents e.g. Statement of Community Involvement, Supplementary Planning Documents and determine Community Infrastructure Levy CIL funding priorities.

### When are the reports available?

The following groups/people will be notified at least 5 days before the relevant Planning Committee meeting by email or letter:

- Anyone who has written to object, support or comment on the proposal
- The Parish, Town or City Council
- Divisional Members (local Councillors) (non-Committee Members)
- The Applicant/Agent

The agenda and reports for the Committee meeting are published at least 5 clear working days before the meeting and can be viewed on our website at [Committee structure - Modern Council \(somerset.gov.uk\)](http://www.somerset.gov.uk).



### Can I speak?

The Applicant/Agent, Parish, Town or City Council, Divisional Members and objectors or supporters are able to address the Committee.

The order of speaking will be:-

- Those speaking in support of the proposal - 15 minutes shared between a maximum of 5 speakers of 3 minutes each
- Those speaking to object to the proposal - 15 minutes shared between a maximum of 5 speakers of 3 mins each
- The Parish, Town or City Council(s) - 3 minutes each
- The Councillor(s) (non-Committee members) - 3 minutes each
- The applicant or their agent - 3 minutes

Public speaking will be timed and the Chair will be responsible for bringing the speech to a close. The speaker/s will be allowed to address the Committee during their registered slot only and will not be allowed to provide further clarification. If an item on the Agenda is contentious, with a large number of people attending the meeting, a representative speaking to object or support the proposal should be nominated to present the views of a group.

The Chair can exercise their discretion in consultation with the Legal Adviser and this maybe, for example, it maybe that comments are derogatory in which case the Chair will exercise discretion to prevent the speaker from continuing, or if balance was required in terms of speakers for and against or to make a specific point, to allow a further speaker.

Comments should be limited to relevant planning issues. There are limits to the range of issues that can be taken into account when considering planning applications. Although not an exhaustive list, these might include:

- Government planning policy and guidance
- Planning legislation
- The suitability of the site for development
- Conflict with any planning policies such as the relevant Development Plan – which are available for inspection on the Council's website
- Adopted Neighbourhood Plans
- Supplementary Planning Documents (SPD)
- Previous planning applications and decisions
- Design, appearance, layout issues and relationship with the surrounding area.
- Living conditions such as privacy, noise and odour.
- Highway safety and traffic issues
- Biodiversity and ecology
- Impact on trees and the landscape
- Flood risk in identified areas at risk.
- Heritage assets such as listed buildings, conservation areas and archaeology
- The economy, including job creation/retention.
- Drainage and surface water run-off.

Issues that are not usually relevant will vary with each application, but the courts have established that the following matters cannot be taken into account when considering planning applications:

- The history or character of an applicant
- Perceived or actual impact of development on property values.
- Land ownership, restrictive covenants or other private property rights including boundary and access disputes or maintenance.
- An applicant's motivations or future intentions.
- Retrospective nature of applications;
- Impact on private views;
- The extent of public support or opposition for a proposal alone;
- Competition between businesses;
- Matters controlled by other (non-planning) legislation such as licensing and building regulations or other laws.

### **How do I register to speak at Planning Committee?**

A request to speak must be made to the Council's Democratic Services team no later than 12 noon on the working day before the Committee meeting either by email to [democraticserviceteam@somerset.gov.uk](mailto:democraticserviceteam@somerset.gov.uk) or by telephone on 01823 357628.

For those speaking to object or support the proposal, the speaking slots will be allocated on a first come first served basis. If there are numerous members of the public wishing to speak in one slot it is advisable to make arrangements for one person to make a statement on behalf of all.

The meetings are hybrid and you can speak either in person at the meeting or virtually. If you wish to speak at the meeting virtually a link will be sent to all those registered.

If you have registered to speak, the Chairman will invite you to speak at the appropriate time during the meeting.

### **Can I present information to the Committee?**

Please be advised that you cannot present documents in any form to the Committee Members at the meeting – this includes photographs and presentations (including Powerpoint presentations).

### **How do I know what time an application will be heard?**

If you have registered to speak in person, you should arrive at the meeting place about 15 minutes before the start time.

When joining virtually you should consider joining the meeting early to ensure your technology is working correctly - you may have to wait in a lobby until being admitted to the meeting. Please note that we will mute all public attendees to minimise background noise.

It is not possible estimate the exact time an application will be heard. It is normal practice to arrange the agenda based on the likely public interest in the items and, whilst the Chair will seek to follow the agenda, the order of items can be varied if the Chair deems it appropriate.

### **Conduct of public speakers (including Virtual)**

- All public speaking must be conducted in a polite and respectful manner
- Speakers are requested to refrain from making personal comments relating to Members or Officers of the Council.
- When speaking, keep your points clear and concise.

If there is any disturbance which makes orderly business impossible the Chair may adjourn the meeting for as long as they think necessary. If a member of the public interrupts proceedings the

Chair will warn the person concerned and if the interruption continues the Chair will order their removal from the meeting room.

### **What if your Divisional Member does not sit on the Planning Committee?**

If your local Councillor is not a member of the Planning Committee, he or she can still address the meeting to outline any concerns or points of support. However, they will not be permitted to take part in the main debate, to make or second a proposal or to vote on any item.

### **Presentation of planning applications**

The Planning Officer will present the case to the Committee explaining the factual matters and any salient points which need to be drawn out with the use of a visual presentation. It is important to note that the Planning Officer is **not** an advocate for either the applicant or any third parties but will make an impartial recommendation based on the merits of the proposal and any relevant material considerations.

### **The role of Officers during the debate of an application**

When an application is considered at Planning Committee, it is the Officers' role to explain why they have concluded that permission should be approved or refused and answer any questions that Members may have. Whilst the Committee has to reach its own decision bearing in mind the Officer advice, report and recommendation, the Lead Planning Officer and Council Solicitor in particular have a professional obligation to ensure that a lawful and unambiguous decision is made in accordance with the Council's Development Plan, planning legislation, regulations and case law. This means, in the event that a contrary decision is sought, they will need to explain the implications of doing so. This can sometimes mean that Officers need to advise and guide Members as to planning policy, what are or are not material considerations, what legally can or cannot be considered or given weight and the likely outcome of any subsequent appeal or judicial review.

Officers' views, opinions and recommendations may, on occasion, be at odds with the views, opinions or decisions of the Members and there should always be scope for Members to express a different view from Officers. However, any decision by the Committee must be based on proper planning reasons as part of the overall aim to ensure that a lawful and unambiguous decision is made. Where this is contrary to that recommended within the Officer report, the Lead Planning Officer and Council Lawyer will advise Members in making that decision.

### **Recording of the Meeting**

Please note that this meeting will be recorded, and the recording will be made available on the Council's website.

You should be aware that the Council is a Data Controller under the Data Protection Act 2018. Data collected during the recording will be retained in accordance with the Council's policy. Therefore, unless you are advised otherwise, by taking part in the Council meeting during public participation you are consenting to being recorded and to the use of the sound recording for access via the website or for training purposes.