

10. PLANNING COMMITTEE

Membership

20 Members appointed by the Council on the basis of 1 Member per ward

N.B. This arrangement constitutes alternative arrangements for the purposes of Section 17 of the Local Government and Housing Act, 1989.

Substitutes

No provision for substitutes.

Chair and Vice-Chair

The Chair and Vice-Chair will be appointed at the Annual Council meeting for the municipal year.

Quorum

The quorum of the Committee shall be one third of the membership, subject to a minimum of 2.

Meetings

The Committee will meet every 4 weeks, or thereabouts at the Council House, Walsall at a time to be agreed by the Chair to enable the business to be dealt with in an expeditious manner.

Attendance at meetings

It is important to ensure that Members taking planning decisions are in possession of all the relevant facts, including matters pointed out, matters that may have been raised during public speaking and matters that may have been discussed and considered by Planning Committee on earlier occasions. Attendance of Members on all occasions during the application phase, i.e. once the application has been submitted, will not only demonstrate that Members are fully informed but will also ensure that high quality, consistent and sound decisions are made, and that the risks of legal challenge are minimised.

A Planning Committee Member should not vote in relation to any planning application unless they have been present in the meeting of the Planning Committee for the whole of the deliberations on that particular application. In the case of a virtual committee meeting that means having listened to the entire presentation and debate relating to a particular application. By taking part in the vote on a particular item, Planning Committee Members will be deemed to have made a declaration to that effect.

In cases where an application has been discussed at Planning Committee on more than one occasion, if a Member has not attended on each occasion during the application phase and wants to take part in the decision on an application, they should consider whether or not they are fully appraised of all the facts and relevant information necessary to properly reach a decision. If there is any doubt, legal advice should be sought by the Member concerned.

Conduct at meetings

The Chair of the Planning Committee is responsible for the conduct of the meeting in accordance with the relevant Council procedure rules and for the effective delivery of business.

Planning Committee meetings are open to the public and they are often well attended particularly when there is a contentious application on the agenda. Meetings are also attended by the applicants/agents and/ or other parties supporting an application and/or objectors against an application. It is important to demonstrate that decisions have been made fairly and transparently and in the correct manner. Any debate should be confined to the material planning considerations of the matter only.

A legal officer should always attend meetings of the Planning Committee to ensure the probity and propriety of the planning and decision-making processes.

Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item, and if considered necessary this may include requesting from each Member as to how they have voted, noting this and the Member's name.

Decisions different to the officer recommendation

Decisions on planning applications must be taken in accordance with the Development Plan unless material considerations indicate otherwise. From time to time the Committee may attach different weight to the potential planning considerations and, therefore, take a decision which differs from the officer recommendation.

Where this occurs, Members must be able to give a clear material planning basis and reason for not taking the officer recommendation. It is important to ensure, as far as possible, that any decision made will be capable of surviving a legal challenge or appeal. The reasons for the decision must be given before the vote and be recorded. The officer attending the meeting should be given the opportunity to explain the implications of such a decision and Planning Committee Members should ensure they clearly identify and understand the planning reasons leading to this conclusion. These reasons will then be recorded in the minutes of the meeting.

Access to information

The Committee will comply with the Access to Information Rules set out in Part 4 of the Constitution.

Training

All Members of the Planning Committee shall attend a training session on Planning Law, Policy and Probity for which the course content will be approved by the Director of Economy Environment & Community prior to sitting on the Committee the first time and subsequently to attend training annually.

Disclosable Pecuniary Interests

Where Members of Planning Committee have a disclosable pecuniary interest in an application before Planning Committee they must not submit representations in relation to the application, even as a member of the public, unless they have a dispensation from the Head of Governance. No Members with a disclosable pecuniary interest (whether they are a member of the Planning Committee or not) are entitled to address the Committee.

Planning Committee Members having a disclosable pecuniary interest in an application must either declare that interest or bring it to the attention of the meeting and may not participate in the discussion or vote on the matter and must leave the room.

Predetermination and Bias

In making their decisions, Members of the Planning Committee should not be seen to side with either the applicant or the objector/s prior to the hearing of the application when all

the relevant facts are known. Planning Committee Members are required to keep an open mind and to exercise an independent mind on issues before the Committee. This is a requirement of the law.

Member contact with applicants and developers

The provisions of these paragraphs are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and officers making such decisions are held accountable for those decisions. They are also designed to assist Members and officers in dealing with approaches from property / land owners / occupiers or developers.

The Government encourages applicants to enter into pre-application discussions. Such discussions are a normal part of the planning process to seek further information and to seek to identify improvements to proposals at an early stage. These discussions and meetings provide an opportunity for the potential applicant to receive advice and information about the policy and technical requirements that must be met and advice on design, on community engagement and other issues which may improve the chances of an application being acceptable to the Local Planning Authority. However, it should be made clear that any guidance given will not bind the LPA to making a particular decision. To minimise the prospect of challenges based on predetermination and bias, the guidelines below should be followed:

- It will always be made clear that any information or statements made cannot bind the LPA to making a particular decision.
- Wherever possible, Members should be accompanied by an officer when meeting with applicants.
- Members should refer applicants who approach them for advice to officers.
- A written record of the discussion should be made by the officer.
- Planning Committee Members are free to take part in meetings with potential applicants or their agents but extra care is needed to avoid any perception of predetermination or bias.

Roles and responsibilities

Members and officers have different but complementary roles in the planning process. Members have more than one role in the process – as Ward Members and as Planning Committee Members.

Members who are on the Planning Committee

The role of Members who are involved in the planning decision making process is to exercise their judgment properly on the planning application before them – and be seen to do this. In coming to a decision on a planning application Planning Committee Members should make this decision based solely on material planning considerations. Officer reports to the Planning Committee will identify what is regarded as material to a decision and if Planning Committee Members are unclear on what matters may or may not be material to a decision they should seek advice from officers.

Whilst Members must act within the law, the exercise of planning judgment is theirs and theirs alone. The Planning Committee must take into account all relevant ministerial guidance, local plans (and related documents) and the advice of officers. The weight Members attach to the relevant considerations is a matter of their planning judgment and Members should not give weight to non-planning related matters that may be raised by members of the public.

Planning Committee Members often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Members should forward a copy of the correspondence to the Head of Planning and Building Control and the relevant case officer. Merely forwarding the correspondence onto the relevant officer would not prevent the Planning Committee Member being involved in determining the application.

Where Planning Committee Members are involved in any discussions prior to an application being made or determined, they should be advised by the appropriate officers of the Council, which should always include a senior planning officer. The involvement of Planning Committee Members in such discussions should be recorded as a written file record and the Planning Committee Member may need to consider declaring an interest in the matter, depending upon their level of involvement. Members should seek legal advice if they are unsure as to whether they have an interest which may prevent them from taking part in a discussion or vote on a particular planning application. The responsibility for declaring an interest rests with individual Members and officers.

Planning Committee Members should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on officers for a particular recommendation.

Planning Committee Members are democratically accountable to their electors and to the wider public on whose behalf they act.

Ward Members not on the Planning Committee

Ward Members who are not on the Planning Committee are in a position to represent the interests of their Ward when it comes to planning and related applications. Ward Members may:

- Observe meetings of the Planning Committee
- Submit written representations to the Planning Committee
- Register to speak at Planning Committee in accordance with the section below (12. Public Speaking at Planning Committee)
- Be consulted on the draft heads of terms for section 106 agreements

Officers

The Director of Economy Environment and Communities and the Head of Planning and Building Control have a dual role in the decision making process:

- i. Making decisions on planning applications under delegated powers.
- ii. Making recommendations on planning matters which are determined by Members at Planning Committee.

When making such recommendations the function of officers is to support and advise Members, ensure that any decision they make is lawful and identify any possible consequences of taking decisions.

Development Proposals submitted by Members and Employees of EE&C Directorate

Where development proposals are submitted by Members and employees of the EE&C Directorate in respect of property or land that they own or have an interest in, it is particularly important that the Council ensures that such applications are handled in a transparent way.

Serving Members of Council who submit applications or act as agents should play no part in the decision making process for that application. Further, they should not take part in

the processing of the application nor should they lobby employees or officers either directly or indirectly.

Any officer of the EE&C Directorate who submits an application for property or land which they own or have an interest in, or on behalf of a friend or family member will inform the Director of EE&C and Head of Planning and Building Control in writing and such applications will be determined in accordance with the Scheme of Delegation.

Officers are required under the Employee Code of Conduct to make a declaration declaring any matters which may conflict with duties as an employee and their personal interests such as:

- Any financial interest in any planning application;
- Other interest where others may think that a conflict of interest may arise, such as for proposals near their residence.

In circumstances where there is a conflict of interest, the officer has no involvement in any part of the decision making process.

Remit

(a) **Planning and conservation** - Functions relating to town and country planning and development management as specified in Part A of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (the "Functions Regulations").

(b) **Commons registration** – Functions relating to the registration of common land and town or village greens, unlawful works on common land, powers to protect unclaimed registered common land and unclaimed town and village greens against unlawful interference and powers to institute proceedings for offences as specified in Part A of Schedule 1 to the Functions Regulations.

(c) **Highways use and registration** - The exercise of powers relating to Public Rights of Way as set out in paragraphs 1 to 34, 41 and 46 - 47 of Part I and paragraphs 47 to 55 of Part B of Schedule 1 to the Functions Regulations

(d) **Trees** - Functions relating to the preservation of trees and protection of important hedgerows as specified in Part I of Schedule 1 to the Functions Regulations.

(e) **Planning Enforcement** - Functions relating to planning enforcement as specified in Part A of Schedule 1 to the Functions Regulations.

Delegations

Within approved Council policy and in accordance with overall aims and objectives of the Council, this Committee shall exercise the following powers:

(1) The powers and duties of the Council as Local Planning Authority and other functions as set out below:

A Functions relating to town and country planning and development management	
5. Power to determine applications for planning permission or permission in principle.	Sections 59(A)(1)(b), 70(1)(a) and (b) of the Town and Country Planning Act 1990 (c.8), as amended.

6. Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990, as amended.
7. Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990, as amended.
8. Power to decline to determine application for planning permission or permission in principle or Listed Building applications.	Section 70A, 70B and 70C of the Town and Country Planning Act 1990, as amended and sections 81A and 81B of the Planning (Listed Buildings and Conservation Areas) Act 1990.
9. Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990, as amended and Arts 8, 10 to 13, 15 to 22, 25 and 26 of the Town and Country Planning (Development Management Procedure) Order 2010 and directions made thereunder.
10. Power to determine applications for planning permission or permission in principle made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992.
11. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended)
12. Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990.
13. Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990.
14. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.
15. Power to grant consent for the display of advertisements and other advertisement powers.	Sections 220, 225A-225K and 324 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992.
16. Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990.
17. Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.
18. Power to serve a planning contravention notice, breach of condition notice or stop notice and to seek any necessary orders as required.	Sections 171C, 171BA, 171BB, 187A and 183(1) of the Town and Country Planning Act 1990, as amended.

18A Power to issue a temporary stop notice	Section 171E of the Town and Country Planning Act 1990
19. Power to issue an enforcement notice and to give written assurance as regards prosecution for person served with a planning enforcement notice and power to withdraw such assurance as appropriate.	Section 172 and 172A of the Town and Country Planning Act 1990.
20. Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990.
21. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990.
22. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 and paragraph 6(5) of Schedule 14 to that Act.
23. Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.
24. Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17 and 33(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
26. Duties relating to applications for listed building consent	Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 22 of Department of the Environment Circular 14/97.
27. Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
28. Power to issue enforcement notice in relation to demolition of unlisted building in conservation area.	Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
29. Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

30. Power to apply for an injunction in relation to a listed building.	Section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990.
31. Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
32. Duty to enter land in Part 2 of the brownfield land register	Regulation 3 of the Town and Country Planning (Brownfield Land Register) Regulations 2017

Other Functions	
B Licensing and registration functions (in so far as not covered by any other paragraph of this Schedule)	
47 Power to permit deposit of builder's skip on highway.	Section 139 of the Highways Act 1980 (c 66).
48 Power to license planting, retention and maintenance of trees etc in part of highway.	Section 142 of the Highways Act 1980.
49 Power to authorise erection of stiles etc on footpaths or bridleways.	Section 147 of the Highways Act 1980.
50 Power to license works in relation to buildings etc which obstruct the highway.	Section 169 of the Highways Act 1980.
51 Power to consent to temporary deposits or excavations in streets.	Section 171 of the Highways Act 1980.
52 Power to dispense with obligation to erect hoarding or fence.	Section 172 of the Highways Act 1980.
53 Power to restrict the placing of rails, beams etc over highways.	Section 178 of the Highways Act 1980.
54 Power to consent to construction of cellars etc under street.	Section 179 of the Highways Act 1980.
55 Power to consent to the making of openings into cellars etc under streets, and pavement lights and ventilators.	Section 180 of the Highways Act 1980.
72. Functions relating to the registration of common land and town or village greens	Part I of the Commons Act 2006 and the Commons Registration (England) Regulations 2008 (SI 2008/1961)
I Miscellaneous Functions	
Part I: functions relating to public rights of way	
1 Power to create footpath, bridleway or restricted byway by agreement.	Section 25 of the Highways Act 1980 (c 66).
2 Power to create footpaths, bridleways and restricted byways.	Section 26 of the Highways Act 1980.
3 Duty to keep register of information with respect to maps, statements and declarations.	Section 31A of the Highways Act 1980.
4 Power to stop up footpaths, bridleways and restricted byways.	Section 118 of the Highways Act 1980.

5 Power to determine application for public path extinguishment order.	<u>Sections 118ZA and 118C(2) of the Highways Act 1980.</u>
6 Power to make a rail crossing extinguishment order.	<u>Section 118A of the Highways Act 1980.</u>
7 Power to make a special extinguishment order.	<u>Section 118B of the Highways Act 1980.</u>
8 Power to divert footpaths[, bridleways and restricted byways].	<u>Section 119 of the Highways Act 1980.</u>
9 Power to make a public path diversion order.	<u>Sections 119ZA and 119C(4) of the Highways Act 1980.</u>
10 Power to make a rail crossing diversion order.	<u>Section 119A of the Highways Act 1980.</u>
11 Power to make a special diversion order.	<u>Section 119B of the Highways Act 1980.</u>
12 Power to require applicant for order to enter into agreement.	<u>Section 119C(3) of the Highways Act 1980.</u>
13 Power to make an SSSI diversion order.	<u>Section 119D of the Highways Act 1980.</u>
14 Duty to keep register with respect to applications under <u>sections 118ZA, 118C, 119ZA and 119C</u> of the Highways Act 1980.	<u>Section 121B of the Highways Act 1980.</u>
15 Power to decline to determine certain applications.	<u>Section 121C of the Highways Act 1980.</u>
16 Duty to assert and protect the rights of the public to use and enjoyment of highways.	<u>Section 130 of the Highways Act 1980.</u>
17 Duty to serve notice of proposed action in relation to obstruction.	<u>Section 130A of the Highways Act 1980.</u>
18 Power to apply for variation of order under <u>section 130B</u> of the Highways Act 1980.	<u>Section 130B(7) of the Highways Act 1980.</u>
19 Power to authorise temporary disturbance of surface of footpath, bridleway or restricted byway	<u>Section 135 of the Highways Act 1980.</u>
20 Power temporarily to divert footpath, bridleway or restricted byway.	<u>Section 135A of the Highways Act 1980.</u>
21 Functions relating to the making good of damage and the removal of obstructions.	<u>Section 135B of the Highways Act 1980.</u>
22 Powers relating to the removal of things so deposited on highways as to be a nuisance.	<u>Section 149 of the Highways Act 1980.</u>
23 Power to extinguish certain public rights of way.	<u>Section 32 of the Acquisition of Land Act 1981 (c 67).</u>
24 Duty to keep definitive map and statement under review.	<u>Section 53 of the Wildlife and Countryside Act 1981 (c 69).</u>
25 Power to include modifications in other orders.	<u>Section 53A of the Wildlife and Countryside Act 1981.</u>
26 Duty to keep register of prescribed information with respect to applications under <u>section 53(5)</u> of the Wildlife and Countryside Act 1981.	<u>Section 53B of the Wildlife and Countryside Act 1981.</u>
28 Power to prepare map and statement by way of consolidation of definitive map and statement.	<u>Section 57A of the Wildlife and Countryside Act 1981.</u>
29 Power to designate footpath as cycle track.	<u>Section 3 of the Cycle Tracks Act 1984 (c 38).</u>
30 Power to extinguish public right of way over land acquired for clearance.	<u>Section 294 of the Housing Act 1981 (c 68).</u>
30A Power to authorise stopping up or diversion of highway.	<u>Section 247 of the Town and Country Planning Act 1990 (c 8).</u>

31 Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway]	Section 257 of the Town and Country Planning Act 1990.
32 Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.
33 Power to enter into agreements with respect to means of access.	Section 35 of the Countryside and Rights of Way Act 2000 (c 37).
34 Power to provide access in absence of agreement.	Section 37 of the Countryside and Rights of Way Act 2000.
41. Power to make limestone pavement orders	Section 34(c) Wildlife and Countryside Act, 1981
46. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations, 1997.
47. Powers relating to the preservation of trees.	Sections 197 to 214D of the Town & Country Planning Act, 1990 and the Trees Regulations 1999 (S.I. 1999/1892).
47A. Powers relating to complaints about high hedges	Part 8 of the Anti-Social Behaviour Act 2003
51. Power to apply for an enforcement order against unlawful works on common land	Section 41 of the Commons Act 2006
52. Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference	Section 45(2)(a) of the Commons Act 2006
53. Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town or village greens	Section 45(2)(b) of the Commons Act 2006
Other Functions	
Approval of and amendment to the local list of buildings	Section 111 Local Government Act 1972
Approval of or amendments to sites of importance for nature conservation (SINCS) and sites of local importance for nature conservation (SLINCS)	Section 111 Local Government Act 1972
Power to act as the Competent Authority in assessing impacts of development on Special Areas of Conservation	Conservation of Habitats and Species Regulations 2017

- (2) In relation to the tables above the following categories of application for planning permission will be determined by the Committee unless expressly delegated in respect of a particular application:
- (a) All major applications i.e. those applications for permission to develop 10 or more dwellings or a building(s) with 1,000 sq metres or more floor space and over 0.5 ha, or new or extended mineral working or waste disposal, except that authority shall be delegated to the Head of Planning and Building Control to determine applications that do not conflict with national, regional or local planning policy;

- (b) Applications that would be a significant departure from the development plan (requiring publicity) where they do not comply with national or local planning policy;
 - (c) Applications where an objection is received from a statutory consultee (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended) where the recommendation is contrary to the consultee comments and where that consultee doesn't already have the power to prevent the determination of the application;
 - (d) Applications made by or on behalf of a member of the Council or a senior officer of the Council (defined for these purposes as any officer who holds a politically restricted post) or any officer employed within Planning and Building Control, and Planning Policy;
 - (e) Applications called in by a Councillor under the procedure set out in paragraph 11 below;
 - (f) Applications that do not comply with the development plan and are recommended for approval;
 - (g) Applications on Council owned land or Council assets where the Council intends to develop, or dispose of that land or asset with the benefit of planning permission and where the value of the land or asset would be increased by more than £100,000;
 - (h) Applications where any petition has been submitted where the recommendation would be contrary to the subject of the petition.
- (3) In consultation with the relevant Overview and Scrutiny Committee to make appropriate recommendations to the Executive on the formulation of the development plan and related local development documents for the Borough.
 - (4) To consider development plans prepared by neighbouring authorities, and other consultations on planning policies and proposals by outside bodies and persons to make appropriate recommendations thereon to the Executive.
 - (5) All matters arising in connection with the West Midlands Local Government Association Regeneration Conference and to make appropriate recommendations thereon to the Executive.
 - (6) To carry into effect Sections 222 and 223 of the Local Government Act, 1972 so far as they affect this Committee and to exercise the powers of the Council in relation thereto and in particular to authorise any appropriate officer to institute or defend on behalf of the Council proceedings before any court or tribunal or to appear on behalf of the Council before any such court or tribunal in any proceedings instituted by the Council or on its behalf or against it.
 - (7) To obtain information as to interests in land under Section 330 Town and Country Planning Act 1990.

- (8) To obtain particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- (9) To appoint proper officers and deputies where required by an Act of Parliament for the discharge of the functions of the Council; delegated to this Committee;
- (10) To carry into effect so much of any Act of Parliament relating to any of the functions set out above and any Orders, Regulations, Schemes or Bye-Laws made under or in pursuance thereof and to exercise non-executive powers of the Council in relation thereto;

(11) Call-in procedure

Notwithstanding the terms of reference of Planning Committee any planning application can be called in by a Councillor for determination by the Committee by the following procedure;

1. The receipt by Planning and Building Control Service Area of a completed call-in form within 28 days of the commencement of public consultation;
2. The completed call-in form must identify:
 1. which material planning reason/s there are (as identified on the published call-in form) as to why the application should be determined by the Committee;
 2. the name of the Councillor calling the matter to Committee and whether the Councillor serves on Planning Committee;
 3. whether the Councillor calling the matter to Committee wishes to be a speaker for or against the matter; and
 4. where the Councillor sits on Planning Committee whether the Councillor wishes to declare an interest.
3. Note: The Committee report will identify the Councillor who called in the application along with the reason given and any interest declared.

(12) Public speaking at the Planning Committee:

- (a) Members, Applicants, agents and any other persons wishing to express a view about a planning application that is being reported to the Planning Committee may apply to do so by registering to speak at the Committee subject to the procedure set out in paragraphs (b) – (l) below. (Details of the procedure below will be included in the acknowledgment letter to agents/applicants and the notification letter/site notices to neighbours. Details will also be available on the Council's website)
- (b) Anyone wishing to speak must register using the online form or in writing (including by e-mail) to the Planning and Building Control Service Area by 5pm on the day before the committee meeting;

- (c) A list of persons wishing to speak arranged in order of the agenda will be produced for the Chair and Members of the Planning Committee. The Chair may, at their discretion alter the order of the agenda at the meeting;
- (d) Any person who has not registered using the online form or in writing will only be allowed to speak at the discretion of the Chair;
- (e) In relation to planning applications specifically, the Committee may hear speakers either only for the applicant or only for objectors provided all parties have been given the opportunity to speak;
- (f) The number of speakers will be restricted to a maximum of two in favour of the officer's recommendation for an item and two opposing the officer's recommendation for an item, chosen by order of notification of a wish to speak. The number of speakers allowed will include any Members who have registered to speak. Such Members are not permitted to take part in the determination of the agenda item whether they are a Planning Committee Member or not.
- (g) Speakers will be limited to 2 minutes each in respect of each item;
- (h) Members of the Committee may ask questions of speakers. Such questions will be put through the Chair.
- (i) If speakers wish to share any documents or images at the meeting these are to be provided to the Planning and Building Control Service Area in advance of the Committee Meeting and at the latest by 5pm 2 working days before the Committee Meeting. No additional documents information or images may be produced by speakers to Planning Committee as this does not give Members of the Planning Committee adequate time to consider the submissions or the issues raised in the material.
- (j) Where Members have a disclosable pecuniary interest in the item they must not submit representations in relation to the item, even as a member of the public, unless they have express dispensation from the Director of Governance.
- (k) In some cases, items may come before the Committee on more than one occasion for example because of a deferral from a previous meeting. Speakers will only be entitled to address the Committee on one occasion unless otherwise agreed by the Chair of Planning Committee on the grounds that the item has significantly changed or been amended or significant new information has been produced raising new material planning considerations. In these circumstances, speakers will only be able to speak about new matters or the amended details and not about matters which have been previously considered by the Committee.
- (l) It is important that speakers and members of the public attending in the public gallery are not permitted to communicate with or pass messages to individual Committee Members as this may give the appearance of partiality.

Guidance Note on Bias and Predetermination in the Planning Process

What is Bias and Predetermination?

- i. The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.
- ii. Decision makers are entitled to be predisposed to particular views. However, predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.
- iii. The leading case on local authority bias and predetermination acknowledges the difference between judges sitting judicially and councillors making decisions in a democratic environment. Given the role of councillors, there must be 'clear pointers' before predetermination is established (Section 25 Localism Act 2011).
- iv. Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because – a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and b) the matter was relevant to the decision.
- v. The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a councillor has made statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.
- vi. Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.
- vii. The case law has also made it clear that the words used by particular councillors and the interpretation put on those words is of particular importance. So care needs to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

Guidance

- viii. With this in mind, in the context of planning applications and decisions:
 - It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
 - It is advisable not to give a view in advance of the decision. If you do comment on a development proposal in advance of the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Committee meeting.
 - Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.
 - Planning Committee Members should avoid giving a view/making statements in advance of determination of a planning application. If such views are given, these should be declared to the Planning Committee and legal advice should be sought if necessary as to whether that particular Planning Committee Member can continue to be part of the decision-making process. Any views given in advance should avoid giving the impression that you have already made up your mind and that your part in the decision is a foregone conclusion.

18. Head of Planning and Building Control

18.1 To be responsible for the day to day management of the Planning and Building Control and Planning Policy functions and without prejudice to the foregoing shall, subject to compliance with the constitutional arrangements and any relevant provisions of the Council's financial and contract rules have authority to exercise the following powers and functions:

Development Management:

18.2 Authority to determine all planning and related applications other than those which have been expressly reserved to the Planning Committee ('Committee') under the terms of reference of that Committee or have been called in by a Councillor for determination by that Committee.

18.3 Authority to determine applications for non-material amendments under section 96 of the Town and Country Planning Act 1990 and variations under section 73 of the Town and Country Planning Act 1990 to existing permissions including for major development.

18.4 Authority to determine policy compliant major applications.

18.5 Authority to respond to various consultation documents received from government departments on planning related matters, except where the Head of Planning and Building Control is of the opinion that the consultation involves matters which should be considered by Committee, Group Leaders or the relevant Portfolio Holder.

18.6 Authority to respond to developers' notices of intention to carry out development under Part 22 of the Town and Country Planning (General Permitted Development) Order 1995 (mineral exploration only).

18.7 Authority to determine whether Environmental Assessments are necessary (Screening Opinion) under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

18.8 Authority to determine applications for lawful development certificates (existing and proposed).

18.9 Authority to determine all Prior Approval applications.

18.10 Authority to determine Permission In Principle applications.

18.11 Authority to sign decisions made by Committee.

18.12 Authority to determine applications for consent for the display of Advertisements.

18.13 Authority to determine Discharge of Condition applications.

18.14 Authority to respond to non-determination appeals.

- 18.15 Authority to remove any planning applications and 'Finally Dispose Of' applications that have not been determined or appealed from the Planning Register in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010.
- 18.16 Authority to determine whether a submitted Pre-Information Process application complies with any Local Development Order adopted by the Council.
- 18.17 Authority to determine whether a formal application of details in respect of agricultural and forestry development should be submitted.
- 18.18 Authority to decline to determine applications in accordance with Section 70 of the Town and Country Planning Act 1990 (as amended).
- 18.19 Authority to make all types of applications relating to planning, listed buildings, adverts, trees and infrastructure etc.
- 18.20 Authority to respond to various consultation documents received from government departments on planning related matters, except where the Head of Planning and Building Control is of the opinion that the consultation involves matters which should be considered by Committee, Group Leaders or the relevant Portfolio Holder.
- 18.21 Authority to enter into, and accept, Legal Agreements under Section 106 for policy-compliant schemes including the collection of financial contributions towards mitigation of the Cannock Chase SAC and to make minor variations to section 106 agreements.
- 18.22 Authority to act as Competent Person under the Conservation of Habitats and Species Regulations 2017 and to issue associated decisions on affected applications.

Trees:

- 18.23 To determine the following applications and to take the following actions under Part VIII of the Town and Country Planning Act 1990 and Town and Country Planning (Tree Preservation) (England) Regulations 2012 and Section 192 of the Planning Act 2008:
- (a) authorise the making of Tree Preservation Orders where immediate action is necessary to protect a tree or trees under threat;
 - (b) determine applications to top, lop or prune trees protected by a Tree Preservation Order;
 - (c) determine applications to fell and remove trees protected by a Tree Preservation Order;
 - (d) confirm or not confirm Tree Preservation Orders;
 - (e) enforce legal requirement for replacement tree planting by the service of the appropriate notice;
 - (f) revoke or vary a TPO in circumstances when an order has been updated or a replacement order has been made; or where an order no longer protects any trees because the trees have been lawfully removed;

(g) undertake appropriate action in response to notifications of intention to lop, top, prune or fell trees in Conservation Areas.

18.24 To instigate action for the removal of dangerous trees under Section 23 of the Local Government (Miscellaneous Provisions) Act 1976, including the powers of entry for officers and contractors to undertake work to dangerous trees.

18.25 Authority to respond to Hedgerow complaints and issue a Hedgerow Retention Notice in accordance with the provisions of the Hedgerows Regulations 1997.

18.26 Authority to respond to High Hedge complaints and to issue notices, including remedial notices, and to carry out any necessary investigation and take action, including defending appeals in accordance with the Anti Social Behaviour Act 2003.

Building Control:

18.27 To carry out all powers and duties in accordance with the Building Act 1984 and Building Regulations 2010.

18.28 The administration of the Safety of Sports Grounds Act, 1975, in relation to the issue of Safety Certificates.

18.29 Authority to take action in respect of prohibition notices under Section 10 of the Safety of Sports Grounds Act, 1975;

Planning Enforcement:

18.30 Advertisements as set out in the Town and Country Planning (Control of Advertisement) (England) Regulations 2007 (as amended):

- a. Authority to remove or obliterate any placard or poster which is displayed.
- b. Authority to remove and dispose of any unauthorised display structure and to exercise any other powers (including the power to recover reasonable expenses in relation to advertisements).
- c. Authority to serve an action notice to resolve persistent problems with unauthorised advertisements and to exercise any other powers (including the power to recover reasonable expenses).
- d. Power to remove display structures, prevent or reduce unauthorised advertisements and / or remove or obliterate signs, so far as they relate to the operational land and premises of statutory undertakers, in accordance with sections 225A, 225C, 225F, 225K and 324 of the Town and Country Planning Act 1990 (as amended).

18.31 Other Development as set out in the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended):

- a. Authority to issue and serve Listed Building Enforcement Notices re unauthorised development.

- b. Authority to issue and serve an Urgent Works Notice on a 'Listed' building, or on a registered park or garden or where a building is judged to be worthy of 'Listing' as a building of Special Architectural or Historic interest and is considered to be at risk due to failure by the owner to carry out reasonable maintenance/upkeep.
- c. Authority to issue and serve Enforcement Notices re unauthorised development.
- d. Authority to issue and serve Enforcement Notices and Temporary Stop Notices where immediate action is necessary.
- e. Authority to issue and serve a breach of condition notice.
- f. Authority to issue and serve a planning contravention notice.
- g. Authority to issue and serve a Stop Notice.
- h. Authority to issue and serve a planning enforcement order.
- i. Power to give written assurance as regards prosecution for person served with an enforcement notice, and power to withdraw such assurance.
- j. Power to remedy defacement of premises and to exercise powers (including the power to recover reasonable expenses), in accordance with sections 225F and 225I of the Town and Country Planning Act 1990 (as amended).
- k. Power to serve notices in respect of post boxes and to exercise any other powers, in accordance with section 225G of the Town and Country Planning Act 1990 (as amended).
- l. Power to exercise powers in respect of bus shelters and other street furniture, in accordance with sections 225F and 225H of the Town and Country Planning Act 1990 (as amended).
- m. Power to remedy defacement at owner or occupier's request and to exercise any other powers (including the power to recover reasonable expenses), in accordance with section 225J of the Town and Country Planning Act 1990 (as amended).
- n. Authority to issue an injunction in consultation with the Director of Governance, Ward Members and Chair of Planning Committee.
- o. Authority to issue and serve a Section 215 Notice.
- p. Authority to issue and serve Requests For Information notices under Section 330 of the Town and Country Planning Act, 1990 and Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- q. Authority to grant powers of entry to appropriate officers.
- r. Authority:
 - (i) not to pursue enforcement action if it is considered that it is not expedient to do so, even when there are unresolved complaints;
 - (ii) to revoke authorities given for enforcement action;
 - (iii) to withdraw enforcement notices;
- s. Authority to take action under the following legislation and authorise officers from Planning and Building Control, other authorities and public agencies working on regional projects to exercise powers within the borough from time to time:

Building Act 1984
Building Regulations 2010
Cinemas Act 1985
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Control of Pollution Act 1974
Control of Pollution Amendment Act 1989
Countryside Act 1968
Countryside and Rights of Way Act 2000
Criminal Procedure and Investigations Act 1996
Cycle Tracks Act 1981
Environment Act 1995
Environmental Damage (Prevention and Remediation) Regulations 2009
Environmental Noise (England) Regulations 2006
Environmental Noise (England) (Amendment) Regulations 2009
Environmental Noise (England) (Amendment) Regulations 2010
Environmental Protection Act 1990
Equality Act 2010
Factories Act 1961 and 1998
Fire Safety and Safety at Places of Sport Act 1987
Flood Risk Regulations 2009
Food and Environment Protection Act 1985
Flood and Water Management Act 2010
Highways Act 1980
Land Compensation Act 1973
Land Drainage Act 1991
Local Government Acts 1972, 1988, 2000 and 2003
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
Local Government and Housing Act 1989
National Parks and Access to the Countryside Act 1949
Natural Environment and Rural Communities Act 2007
New Roads and Street Works Act 1991
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Noise Insulation Regulations 1975
Noise Insulation (Amendment) Regulations 1988
Offices, Shops and Railway Premises Act 1963
Police and Criminal Evidence Act 1994
Pollution Prevention Control Act 1999
Public Health Acts 1875, 1925, 1936, 1961 and 1969
Regulation of Investigatory Powers Act 2000
Road Traffic Acts 1988 and 1991
Road Traffic (Consequential Provisions) Act 1988
Road Traffic Regulation Act 1984
Safety of Sports Grounds Act 1975
Sunday Trading Act 1994
Theatres Act 1968
Business and Planning Act 2020
Planning Act 2008

Planning and Compulsory Purchase Act 2004
Localism Act 2011
Town and Country Planning Act 1968
Town and Country Planning Act 1990
The Planning (Listed Buildings and Conservation Areas) Act 1990
Town Improvement Clauses Act 1847
Town and Police Clauses Acts 1847 and 1889
Transport Acts 1985 and 2000
West Midlands County Council Act 1980
Wildlife and Countryside Act 1981
Caravan Sites and Control of Development Act 1960
Caravan Sites Act 1968
Growth and Infrastructure Act 2013
Housing Act 1996
Housing Act 2004
Human Rights Act 1998
Infrastructure Act 2015
Local Democracy, Economic Development and Construction Act 2009
Planning (Hazardous Substances Act) 1990
Planning and Compensation Act 1991

Together with any related secondary legislation.

Strategic Planning Policy:

- 18.32 Authority to respond to various consultation documents received from government departments on planning policy related matters, except where the Head of Planning and Building Control is of the opinion that the consultation involves matters which should be considered by Committee, Group Leaders or the relevant Portfolio Holder.
- 18.33 Maintain a schedule of Local Sites (Sites of Importance/Local Importance for Nature Conservation) with the authority to add or remove sites from the schedule in line with published criteria and endorsement by the Birmingham and Black Country Local Sites Partnership.
- 18.34 To determine and review Conservation Areas and the Local List in accordance with Section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Functions:

- 18.35 Authority to vary fees and charges within the area of responsibility (excluding car parking charges), not fixed by statute.
- 18.36 Authority to approve short lists of consultants to be invited to tender for or to submit proposals for specific investigations, analyses or designs, subject to compliance with Contract Rules.

- 18.37 Authority to approve short lists of contractors to be invited to tender for contracts for a specific scheme of works or for a schedule of rates contract for such works, subject to compliance with Contract Rules.
- 18.38 Authority to accept tenders for the supply of works, materials, equipment, plant, investigations, analyses or designs, subject to compliance with Contract Rules.
- 18.39 Authority to accept the tender which is next most economically advantageous to the Council in cases where the successful tenderer withdraws before entering into contract, subject to compliance with Contract rules.
- 18.40 Authority to utilise other contractors in the event of the successful tenderer being unable to meet the programme requirements. Additional or substitute contractors shall be chosen in order of their tenders' rank when assessed by officers, and appointed in compliance with Contract rules.
- 18.41 Authority to appoint consulting engineers after fee bidding, subject to compliance with Contract Rules.
- 18.42 Authority to appoint agency staff subject to compliance with Contract Rules.

19. Applications to be determined by Planning Committee:-

- (a) All major applications i.e. those applications for permission to develop 10 or more dwellings or a building(s) with 1,000 sq metres or more floor space and over 0.5 ha, or new or extended mineral working or waste disposal, except that authority shall be delegated to the Head of Planning and Building Control to determine applications that do not conflict with national, regional or local planning policy;
- (b) Applications that would be a significant departure from the development plan (requiring publicity) where they do not comply with national or local planning policy;
- (c) Applications where an objection is received from a statutory consultee (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended) where the recommendation is contrary to the consultee comments and where that consultee doesn't already have the power to prevent the determination of the application;
- (d) Applications made by or on behalf of a member of the Council or a senior officer of the Council (defined for these purposes as any officer who holds a politically restricted post) or any officer employed within Planning and Building Control, and Planning Policy;
- (e) Applications called in by a Councillor under the procedure set out in paragraph 11;
- (f) Applications that do not comply with the development plan and are recommended for approval;

- (g) Applications on Council owned land or Council assets where the Council intends to develop, or dispose of that land or asset with the benefit of planning permission and where the value of the land or asset would be increased by more than £100,000;
- (h) Applications where any petition has been submitted where the recommendation would be contrary to the subject of the petition.