# IMPORTANT

# Guidance Notes on Procedures

These notes should be read with the Planning Protocol which is incorporated in the Council's Constitution

## HOW THE COMMITTEE OPERATES: INFORMATION FOR MEMBERS OF THE PUBLIC

## MAKING REPRESENTATIONS TO THE COMMITTEE

All representations to the Committee should deal with the planning merits of a case only, and must not contain anything defamatory or discriminatory. If a person or an organisation wants to make a representation to the Committee about an item on an agenda they may choose to contact Members directly but should note that direct communications may be shared with officers. Officer in turn may comment on and share more widely the details of that lobbying in line with the relevant paragraph in the Articles of the Constitution on lobbying Members.

The recommended way to submit views to the Committee is to either:

(i) **Make a written submission** – i.e. write to the Clerk to the Planning Committee. A written submission should be no more than 2 pages in length, though photographs and other illustrative material can be included in addition.

**OR**

(ii) **Make a deputation request** – i.e. ask to speak at the meeting. The Committee will only accept deputations from people or organisations who have a planning-related interest that could be affected directly by the matter under consideration; these are: requests from an objector, an applicant, the owner of premises under enforcement action, or their agents. The Committee will allow deputation requests either in objection or in support of the application or the Officers' recommendation under consideration. Deputation requests must be made in writing, with a detailed statement of the issues to be raised. They should not exceed 2 pages in length, though photographs and other illustrative material can be included in addition.

The Clerk will send a deputation statement to an applicant where a specific request is made. They may do so, in order that an oral response may be made at the meeting.

All written submissions and deputation requests must be sent by **9am the day before the meeting** to:-

Clerk to the Planning Committee
Committee Services
Town Hall
Judd Street
London WC1H 9JE
Tel: 020 7974 5726/1619/5678
E-mail: planningcommittee@camden.gov.uk
Fax: 020 7974 5921

All written submissions and deputation statements received are circulated to Members of the Committee and are made public on a supplementary committee agenda. At the meeting deputees can only raise those issues set out in their deputation statement.

Deputations and responses are each limited to five minutes. Where there is more than one request to speak on an application, the deputees are notified and invited to consider making a joint deputation for a total of five minutes; otherwise the five minutes is apportioned among the speakers by the Chair. If the time limit is exceeded, the Chair will immediately call for an end to the speech.

The Committee will only agree to accept representations made outside these procedures where there are exceptional circumstances, for example, if someone can show they have been prejudiced by a failure to follow procedures.[1]

Should members of the public speak to or lobby individual Committee members during the course of the meeting, Members are advised to share the content of those conversations with officers. Officers in turn may advise on what was said and if necessary, may share the content with the Committee and meeting in general Communications on planning matters not yet on the agenda should be sent to the Planning Division.

## GUIDANCE FOR COUNCILLORS WHO ARE NOT MEMBERS OF THE COMMITTEE

Ward members or other councillors (e.g. in adjoining wards) who are not sitting on the Committee but who have a direct planning interest or connection to a matter under consideration, will be permitted to make oral representations to the Committee on behalf of constituents or other interested parties at the discretion of the Chair and the Committee. This will be in addition to any deputations but will be subject to a maximum total time limit of 5 minutes. A relevant Cabinet Member may address the Committee in addition to the ward members or other councillors on an application at the discretion of the Chair and Committee. Councillors not falling into one of these categories will not be invited to speak by the Chair except in exceptional circumstances. Any Councillor wishing to address the Committee must send their request to the clerk by 9am the day before the meeting.

## HOW DECISIONS ARE TAKEN AT THE MEETING

In very straightforward cases where the recommendation is to approve, the Committee sometimes makes a decision based solely on the Officer's report without an Officer presentation or extensive debate. However most matters under consideration are dealt with as follows:

- the Chair takes the item in the order listed on the agenda and announces its name and the nature of the proposal;

[1] *Note from the Borough Solicitor:* While the Committee's procedure should be followed, it is also important that the fundamental rights of the applicant are preserved. In particular, it may sometimes, such as if something emerges at the meeting which is novel or unexpected such as the suggestion of additional conditions, be appropriate for the Chair to invite the applicant to address the meeting either again should they have responded to a deputation(s) or for the first time to respond to, for example, a ward councillor. Fundamentally, applicants must receive a fair hearing and to ensure this flexibility of this nature on some occasions will be required, including permitting the applicant to address the Committee even if there are no objections if they express a firm desire to do so.

- the Planning Officer (where necessary) briefly introduces the item;
- deputation (if any) - 5 minutes;
- deputation response - 5 minutes;
- the Committee may put questions to those who have spoken;
- the Committee then debates the matter seeking to avoid repetition of issues already raised and does not hear any additional representations or comments, but may seek clarification from officers.

When the Chair considers that there has been sufficient debate, he/she will call for a decision. A vote may be taken on the recommendation in the report or on a motion moved by a Member of the Committee, altering the recommendation. Generally the Chair will move the officers' recommendation, with any amendments identified during the course of the debate. The recommendation will be approved or rejected through a simple show of hands.

If the recommendation is rejected, the Chair will invite the Committee to formulate an alternative course of action and identify the reasons for this. Officers will advise on those reasons as appropriate. The Chair will then call for a vote on the alternative course of action, summarising the reasons identified by the Committee. The Committee will then be asked to approve or reject this.

If this alternative course of action is rejected the Committee will generally resolve to defer the item to allow officers time to work on a revised report to support the Committee in their decision-making.

The Committee may very occasionally exclude members of the public and the press to consider legal advice.

The Committee has agreed a general delegation to the Head of Development Management to, subsequent to the meeting and in line with the Committee's general decision and direction, finalise the wording and reasons of:

- Additional or amended conditions;
- Approvals or refusals contrary to the officer's recommendation;
- Additional reasons for refusal or approval where not set out in the officer's report.

The Committee will as a general practice confirm this delegation as part of its decision-making on applications where appropriate and may choose not to give this delegation if it considers it appropriate for it to agree the final wording and reasons itself and therefore ask for the matter to come back to Committee.

**PROCEDURE FOR ITEMS COMING BACK TO THE COMMITTEE**

On occasion, an item that has previously been to the Committee will come back to a different meeting. In the interests of consistent and robust decision-making the Committee will generally follow the approaches set out below to hearing such items. This does not preclude the Committee from opting for a different procedure should the circumstances of the case warrant it. The Head of the Development Management, following consultation with the Chair and the Borough Solicitor, will decide on the process to be followed in each case.

| Reason from item coming back to Committee | Hearing procedure to be used |
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| The item was not reached on the agenda, with no evidence or deputations heard. | The item is carried forward to the next available Committee meeting and heard afresh, with a full presentation by the Planning Officer. Therefore new deputations and different Committee members being present will be permitted. |
| The Committee started hearing the item but did not come to a determination, for reasons other than deferral for further information. | The item is adjourned to the next available Committee meeting. In recommending the process to be followed, consideration will be given to factors including the point in the proceedings reached when the item was initially adjourned, the complexity of the item and whether any deputations were heard previously.<br><br>Usually the item will be considered part-heard and the Committee will resume its deliberations from the point in the discussions at previous meeting at which it was decided to defer the item. In this situation new deputations and written submissions will not be permitted and only those Committee Members who were present during the original discussion will be able to partake.<br><br>However if circumstances dictate that this approach would not be appropriate then the item will be considered afresh in full with a new presentation and new representations and different Committee members being present permitted. |
| The Committee defers determination in order to seek further information. | Usually the Committee will resume its deliberations from the point in the discussions at previous meeting at which it was decided to defer the item. In this situation new deputations and written submissions will not be permitted and only those Committee Members who were present during the original discussion will be able to partake.<br><br>In recommending the agreed process, the time elapsed since the original meeting will be a significant consideration in deciding the process to be followed. Should a significant period of time have elapsed then the item will be heard afresh, with a new presentation, new representations and different Committee Members being present permitted. The nature of the information sought and obtained will also have a bearing on the approach followed thereafter. |

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| The item was determined but after the meeting, and prior to the final decision being issued, a problem or challenge to the decision is raised which it is considered warrants the matter being decided again. | Unless there are exceptional circumstances causing the Borough Solicitor to advise otherwise, the item is heard afresh at the next available Committee meeting. Therefore new deputations and different Committee Members will be permitted. It is legitimate for references to the last meeting to be made and it may be possible to focus the debate on the new issues but fundamentally it is reheard in its entirety.<br><br>Advice will be given as to what, if any, weight can be given to previous decision. That usually will be that the Committee can and should give it some weight, and should the Committee decide to make a different decision be ready to explain why. However the Committee is not bound by the previous decision and fundamentally can make a different decision. |

## NOTE FROM LEGAL SERVICES ON LEGAL REQUIREMENTS

In carrying out duties relating to planning, the Council must have regard to various statutory provisions. This note summarises some of the most important and provides information on other relevant matters for Members of the Planning Committee and members of the public. Members of the Committee have also received training on these requirements.

## STATUTORY DUTIES IN RELATION TO DECIDING PLANNING APPLICATIONS

In determining any planning application, the Council is required to have regard to the provisions of its Development Plan so far as is material to the application and to any other material considerations and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. The Council's adopted Development Plan includes the Camden Local Plan, Camden Site Allocations document and the Mayor of London's Spatial Development Strategy ('the London Plan'). The Development Plan also includes documents relating to part of the borough including the Fitzrovia Area Action Plan, the Euston Area Plan and neighbourhood plans that have been approved at a local referendum.

Material considerations might include the number, size, layout, siting, design, external appearance and existing use of buildings, means of access, landscaping, impact on the neighbourhood and the availability of infrastructure. Central Government policy guidance will always be a material consideration of significant weight. The National Planning Policy Framework sets out the government's planning policies and how these should be applied. This is supplemented by the Planning Practice Guidance. Other considerations include written and verbal representations, comments of statutory consultees and relevant decisions of the Planning Inspectorate.

**EXERCISING SPECIFIC DUTIES IN RELATION TO LISTED BUILDINGS AND LAND WITHIN CONSERVATION AREAS**

The Council is required to give effect to the following statutory requirements in respect of listed buildings and land in Conservation Areas.

**Section 16(2) of the Listed Buildings Act 1990 (**Planning (Listed Buildings and Conservation Areas) Act 1990)
In considering whether to grant **listed building consent** for any works, the Council is required to have **special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest, which it possesses**.

**Section 66(1) of the Listed Buildings Act 1990**
In considering whether to **grant planning permission for development which affects a listed building or its setting**, the Council is required to have **special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.**

**Section 72(1) of the Listed Buildings Act 1990**
In the exercise of various functions under the Planning Acts in relation to land in conservation areas (including determination of planning applications) the Council is required **to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area.**

These statutory requirements need to be considered alongside relevant heritage guidance contained in the National Planning Policy Framework including the following:

*"193. When considering the impact of a proposed development on the significance of a designated heritage asset,* ***great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.***

*194.* ***Any harm to, or loss of, the significance of a designated heritage asset*** *(from its alteration or destruction, or from development within its setting),* ***should require clear and convincing justification. Substantial harm to or loss of:***

***a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;***

***b) assets of the highest significance, notably scheduled monuments,*** *protected wreck sites, registered battlefields,* ***grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.***

*195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is*

*necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

*a) the nature of the heritage asset prevents all reasonable uses of the site; and*
*b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
*c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*
*d) the harm or loss is outweighed by the benefit of bringing the site back into use.*

*196. Where a development* ***proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal*** *including, where appropriate, securing its optimum viable use.*

*201. Not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 195 or less than substantial harm under paragraph 196, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.*"

**THE HUMAN RIGHTS ACT 1998**

The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include the following:

**(a) Article 6(1): Right to a fair trial**
In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

**(b) Article 1 of the First Protocol: Protection of property**
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

**(c) Article 14: Prohibition of discrimination**
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

Members of the Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions.

However most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of rights

contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.

**EQUALITY ACT 2010 / CHILDREN ACT 2004**

The Equality Act 2010 and the Children Act 2004 incorporate duties in respect to public law decision making which sit alongside the specific duties in the Planning Act.

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty *inter alia* when determining all planning applications. In particular the Committee must pay due regard to the need to:

(1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;

(2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

(3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Section 11(2) of the Children Act 2004 states:

*"(2) Each person and body to whom this section applies must make arrangement for ensuring that –*
*a) their functions are discharged having regard to the need to safeguard and promote the welfare of the children; and*
*b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need."*

**OTHER RELEVANT MATTERS**

**The Town and Country Planning (Use Classes) Order 1987 (as amended)**

Reports to the Committee often refer to a development having a use within a particular class of the Use Classes Order e.g. a new hotel might be described as being a C1 use.

The classes of uses set out in the 1987 Order can be very broadly summarised as follows:

Class B2: General industrial (an industrial process other than one falling within Class B1)
Class B8: Storage or distribution

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| Class C1: | Hotels and hostels (hotel, boarding or guest house where no significant element of care is provided) |
| Class C2: | Residential institutions |
| Class C2A: | Secure residential institutions |
| Class C3: | Dwellinghouses |
| Class C4: | Houses in multiple occupation |
| Class E: | Commercial, business and service: shops, financial and professional services, cafes and restaurants, office, research and development, light industrial, clinics, health centres, creches, day nurseries, day centres, gymnasiums |
| Class F.1 | Learning and non-residential institutions: schools, non-residential education and training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts |
| Class F.2 | Local community uses; small essential shops, community halls, swimming baths, skating rinks, outdoor sport and recreations. |

Certain uses (described as "Sui Generis") are identified in the Order as not falling within any of the Use Classes set out in the Order. These include: pubs and other drinking establishments, takeaways, cinemas, concert halls, theatres, amusement arcades or centres, launderettes, taxi or motor vehicle hire businesses, hostels, petrol stations, car show rooms, night clubs, casinos, and scrapyards or yards for breaking of vehicles.

The effect of the Use Classes Order is that change within a Use Class e.g. from a hotel to a guest house is not development requiring planning permission.

**Enforcement**

There is no immediate criminal liability for breaches of the rules relating to planning law except in a number of specific cases including displaying an advertisement without consent, unauthorised works to a listed building and breach of a tree preservation order.

The Council's principal planning enforcement remedy is the service of an enforcement notice under Section 172 of the Town and Country Planning Act 1990. A local planning authority may issue a notice where it appears to them -

(a) there has been a breach of planning control; and
(b) that it is expedient to issue the notice having regard to the provisions of the development plan and to any other material considerations.

An enforcement notice will identify the breach of planning control and will require steps to be taken within a specific time to remedy the breach. A criminal offence is committed in the event of such steps not being taken within the required period.

Other enforcement remedies available to the Council under the Town and Country Planning Act 1990 include Stop Notices (Section 183), Breach of Condition Notices (Section 187A) and injunctions restraining breaches of planning control (Section 187B).

## SECTION 106 PLANNING OBLIGATIONS

In order to make the scheme acceptable in planning terms, applications are sometimes approved subject to completion of a planning obligation (usually referred to as a Section 106 Agreement) securing particular planning requirements e.g. Affordable Housing, or a Servicing Management Plan.

Under the Community Infrastructure Levy Regulations 2010 to be a material consideration in a planning decision, planning obligations must meet all of the following tests:

(a) Necessary to make the development acceptable in planning terms;

(b) Directly related to the development; and

(c) Fairly and reasonably related in scale and kind to the development.

## MAKING A DECISION

### Statutory Rules and Council Codes

All members of the Committee are bound by legal rules in relation to any matter being considered by the Committee in which they may have had an involvement. Members are aware of these rules and have received training on them.

There are specific statutory requirements for members to disclose any **"Pecuniary Interest"** linked to any matter being considered at the Committee meeting. A Pecuniary interest could include deciding an application by a company which the member or their partner were employed or owned shares or an application relating to land owned by the member or their partner.

Committee Members are also required to have regard to and comply with the **Members' Code of Conduct** and **Planning Protocol** (incorporated in the Council's Constitution) when fulfilling their role as a Planning Committee Member.

### Fair and open decision-making

All decisions made by the Committee must be made in a fair and open way and in particular when making a decision all Planning Committee Members must:

- consider the matter with an open mind;
- base their decision on the planning merits and considerations (including representations) before them;
- not be biased or have pre-determined how they will decide a particular application;
- not have a Pecuniary Interest and comply with the Member Code of Conduct and the Planning Protocol;
- seek to ensure the decision is generally consistent with others taken previously unless there are good reasons to decide otherwise;
- ensure reasons for their decision are given so they can be recorded.

Failure to give effect to these requirements could (amongst other things) lead to a Committee decision being judicially reviewed by the Court. Where there is an allegation of apparent pre-determination, the Court will assess the case on the basis of what a fair minded observer, knowing the relevant facts, would think.

Therefore Members are generally advised to avoid public statements (including expressing views in emails) suggesting they have taken a fixed position on any application before the meeting. However these rules do not prevent individual Members having a prior view about proposals or being predisposed towards a particular outcome as long as they can demonstrate they have approached the matter fairly and with an open mind and based their decision on the planning considerations (including representations) before them at the point of decision making.

The Localism Act 2011 includes provisions setting out what a court can take into account in considering whether bias and pre-determination has occurred. Specifically Section 25 of the 2011 Act provides that a decision maker is not to be taken to have had, or appeared to have had, a closed mind when making the decision *just* because they had previously done anything that directly or indirectly indicated what view they took, or might take, in relation to a matter.

**Declaration of Interests**

Where a member has a **Pecuniary Interest** in any matter being considered by the Committee meeting, they must declare the interest and cannot take part in consideration of the matter and must leave the room.

Under the Council's Code of Conduct any interest that does **not amount to a Pecuniary Interest but which would have a significant impact upon a member's judgement** should be declared by the member at a meeting. In each case this would be a matter for the members own judgement having full regard to the facts. An example of this type of interest might be in relation to a planning application on a site very near to the member's home (where it may well be advisable for a member to not take part.)

In other cases a member may **declare an interest or involvement in a matter for reasons of good practice and transparency** simply to be as open as possible. In these circumstances declaration would have no impact on the Member's participation.

Failure by a member to declare an interest when required to do so could give rise criminal sanctions or an application for judicial review on the grounds of bias or predetermination

**INVOLVEMENT OF THE MAYOR OF LONDON IN CERTAIN PLANNING APPLICATIONS**

In accordance with the Town and Country Planning (Mayor of London) Order 2008, if the Council receives an application within the following categories (developments of potential strategic importance) they must notify the Mayor of London:

1. Part 1 - Large Scale Development: criteria based on the amount of residential housing, size by square metre, height depending on location and increase in height;
2. Part 2 - Major Infrastructure: types of large scale development including mining, waste and airports;
3. Part 3 - Development that may affect strategic policies: including the loss of residential or Commercial, business and service or playing fields, development on green belt or Metropolitan Open Land and a range of uses over 2500sqm that do not accord with the Development Plan; and
4. Part 4 - Where the Mayor must be consulted because of direction of the Secretary of State in the GDPO.

The Mayor may then issue a statement on compliance with the London Plan policies (within 6 weeks). Unless the Mayor has notified the Council that he has no wish for further involvement, the Council must make a draft determination of the application and notify the Mayor. The Mayor has 14 days to:

(a) Allow the borough to proceed with its decision unchanged; OR
(b) Where the application falls within only Parts 3 and 4 of the Schedule or is contrary to good strategic planning in Greater London, direct the borough to refuse the application having regard to:
    - the principal purposes of the GLA;
    - the effect the permission would have on the health of persons in Greater London;
    - sustainable development; and national policies, international obligation, spatial development strategy of London and adjoining areas, SOS guidance, promotion of the use of the Thames, waste policies and legislation, the limitation of major accidents and distance between different uses of land; OR
(c) Consider and advise whether he is justified in taking over the application. The Mayor will consider whether:
    - The development or any related issues are of such a nature or scale that it would have a significant impact on the spatial development strategy;
    - the development or any related issues has significant effects that are likely to affect more than one London Borough (except if the development is for more than 150 houses);
    - there are sound planning reasons for issuing a direction;
    - if the development is for more than 150 houses, whether the Council is achieving appropriate targets; and
    - The extent to which the Council has/is achieving targets in the development plan.

## HOW THE COUNCIL DEALS WITH ITS OWN APPLICATIONS

Sometimes the Council will have to consider applications submitted by or on behalf of the Council itself, for example as part of the Council's Community Investment Programme.

Planning legislation provides for planning authorities to determine "Council own" applications. Parliament has accepted an overlap in the role of the Council as regulatory planning authority and in its landholding / applicant capacity. Notwithstanding this, the Council as planning authority will seek to deal with these applications along the same lines as any other, insofar as consistent with legislation, organisational constraints and planning policy.

So for example, separation will be built into the processing of the applications, different officers will generally be allocated to advise the Council as planning authority and as applicant, and officers in Development Management will not be tasked with acting as planning advisers to the applicant.

Any recommendation for approval of Council's own applications would usually be contingent on certain planning requirements ("Heads of Term") being secured (which normally would be incorporated in a Section 106 Agreement.)

However as a matter of law the Council cannot enter into or enforce a Section 106 Agreement against itself. So where it is granted permission for its own development, Heads of Term will be embodied in a "Shadow Section 106 Agreement." Although this cannot be enforced in the courts, it will document the requirements of the Heads of Terms in a similar form to a "standard" Section 106 agreement and will be negotiated by separate lawyers within the Borough Solicitors Department representing the interests of the Council as landowner/ applicant and the Council as planning authority.

Senior representatives of the applicant department (usually the relevant Director) will sign a letter formally undertaking on behalf of the Council applicant that the Shadow Section 106 will be complied with. This letter will be noted on the Planning Register and compliance with the Shadow Section 106 will be tracked and monitored by Development Management officers in the same way as a "standard Section 106 Agreement".

## SAFEGUARDING DIRECTION FOR HS2

The Secretary of State for Transport (SST) has issued the Safeguarding Direction for the proposed High Speed 2 rail line.

The effect of the Direction is that all planning applications within the zones designated on HS2 safeguarding plans (save for certain limited classes of exempt applications) not determined by 9 July 2013 must be referred to HS2 Limited.

HS2 Ltd will assess referred applications on a case-by-case basis on the grounds of whether the proposed development will impact on its ability to build or operate HS2 or lead to excessive additional costs.

After considering this HS2 Ltd can either make a recommendation of refusal, or allow the Council to determine the application with the possibility of suggested conditions if required to protect the HS2 project.

If HS2 Ltd does not respond to the consultee notification within 21 days, the Council may proceed to determine the application.

If HS2 recommend refusal due to a conflict with the HS2 project, the decision notice should reflect this in the reasons for refusal.

The Council must not grant plant planning permission otherwise than to give effect to the recommendation of HS2 Ltd.

If the Council is minded to approve the permission against the advice of HS2, it must consult the SST with prescribed documentation (including justification for disagreeing with HS2 Ltd) and cannot grant permission until the expiry of a period of 21 days from the date the prescribed documentation was delivered to the SST.

## NOTE ON SCHEDULE 17 APPLICATIONS UNDER THE HS2 ACT

### Introduction

This note describes the planning regime that is now in place for development in the borough with the enactment of the High Speed Rail (London – West Midlands) Act 2017 (“the HS2 Act”).

The HS2 Act provides that planning permission is deemed to be granted for the carrying out of development authorised by the Act. Schedule 17 imposes conditions on the deemed planning permission, some of which require the nominated undertaker to seek approval from the Council. The planning permission deemed to be granted is similar to an outline planning permission and the schedule 17 applications can be compared to Reserved Matters-type applications, although the considerations which may be taken into account are prescribed by the Act.

## Assessment

Any application that is made under Schedule 17 has to be assessed under the provisions of the particular paragraph in Schedule 17 under which it is made. The paragraphs contain slight variations, which is set out in more detail below, so when each application is made the Council will need to ensure it checks the correct provisions for that particular application. It is also important to continually check current provisions of the HS2 Act in case any future amendments to the Act are made.

**Importantly, an application under Schedule 17 cannot be assessed as if it were a planning application**. Planning permission has been deemed to be granted for the HS2 scheme subject to the conditions set out in Schedule 17; all applications made pursuant to the conditions set out in Schedule 17 are to be determined under the provisions of the schedule.

All applications have to be determined within 8 weeks of receipt of the application, unless HS2 Ltd. agrees to an extension of time for determining the application. If the Council does not make a determination within the 8-weeks or the agreed extended time then the application is deemed to be refused by the Council. At that stage HS2 Ltd. can appeal the decision to the "appropriate Ministers", who are defined in the HS2 Act as the Secretary of State for Communities and Local Government and the Secretary of State for Transport.

## Conditions and Refusals

Under some paragraphs in Schedule 17 the Council will be unable to attach conditions to approval without first obtaining HS2 Ltd.'s agreement. Specifically this **does** apply to:-

Paragraph 4 – *Condition relating to matters ancillary to development*
Paragraph 6 – *Condition relating to road transport*
Paragraph 7 – *Conditions relating to waste and soil disposal and excavation*

HS2 Ltd.'s reason for imposing this requirement is to avoid ultra vires or unreasonable conditions being imposed on the approvals.

This is not the case for building work and specification applications made under Paragraph 2 of Schedule 17, where it is not necessary to obtain HS2 Ltd's agreement before attaching conditions.

The general grounds on which the Council can refuse a Schedule 17 application, or impose conditions, are that the arrangements ought to be modified to:

- preserve the local environment or amenity;
- prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area; or
- to preserve a site of archaeological or historic interest or nature conservation value

and are reasonably capable of being so modified

There are slight variations on the above for different types of applications for approval, but these will be made clear in the officer's report for each specific application that is brought to the Planning Committee.

**Appeals**

All Schedule 17 applications have to be determined within eight weeks of receipt of the application, unless HS2 Ltd. agrees to an extension of time for determining the application. If the Council does not make a determination within the eight weeks or the agreed extended time then the application is deemed to be refused by the Council. At that stage HS2 Ltd. can appeal to the "appropriate Minsters", who are defined in the HS2 Act as the Secretary of State for Communities and Local Government and the Secretary of State for Transport.

**Environmental Minimum Requirements**

The Environmental Minimum Requirements (EMRs) are a suite of documents that include the Code of Construction Practice, the Planning Memorandum (which the Council is signed up to), the Heritage Memorandum, the Local Transport Management Plans and the Register of Undertakings and Assurances, to name a few.

The controls contained in the EMRs, along with powers contained in the HS2 Act and the Undertakings given by the Secretary of State, are designed to ensure that impacts which have been assessed in the Environmental Statement will not be exceeded

The Council does not have the power to approve or refuse these documents, although it has been able to influence them over the years as they have been formulated. For example, the Code of Construction Practice was heavily amended as a result of the comments made by Camden Council and other local authorities along the proposed HS2 line. This is a "living document" that will change over the years of construction of the HS2 scheme. As will the Local Transport Management Plans. When changes are made to these documents the Council will be asked to comment but will not have the power to refuse any amendments if HS2 Ltd, as Nominated Undertaker, does not agree with them. The HS2 Act does not provide the Council with that right of veto.

HS2 Ltd, as nominated undertaker will in any event, and apart from the controls and obligations contained in the EMRs, be required is to continue to use reasonable endeavours to adopt mitigation measures that will further reduce any adverse environmental impacts caused by the HS2 scheme – as long as those measures do not add unreasonable costs or delays to the project. If the Council considers that any updates to EMRs do not in fact reduce adverse environmental impacts it will need to raise these with the Nominated Undertaker and try and resolve any issues through discussions. Please also see the enforcement section below.

**Enforcement**

The Council does not have the right to enforce against any breach of compliance with the EMRs. Instead, the system is set up as a self-regulating one. The can raise any issues or concerns with HS2 Ltd. as Nominated Undertaker, who has ultimate sanction over its contractors and sub-contractors to ensure that the EMRs are being complied

with. In the event that there is a breach then HS2 Ltd. is required, under the terms of the Code of Construction Practice, to take appropriate action to ensure compliance.

Any undertaking or assurance made by the Secretary of State in relation to the HS2 scheme (which form part of the EMRs), is enforceable only as a contempt of Parliament.

In practice, if it is the Council's view that there are breaches to the EMRs and it does not believe that HS2 Ltd. is taking appropriate action to ensure compliance it can take the matter up with the Secretary of State for Transport and seek to resolve the issue with them and if that in itself does not resolve matters seek to have the issue resolved in Parliament.

It is not the Local Planning Authority's usual experience to have such limited involvement or oversight, compared to the various controls it has when determining planning applications. However, the application of the EMRs under the HS2 Act is quite different and the Council will need to take that into account when determining submissions.

**Qualifying Authority**

The Council signed up to the HS2 Planning Memorandum making it a qualifying authority, as defined in the HS2 Act. This gives the Council more controls than it would otherwise have to approve certain applications, such as lorry routes.

In May 2018, the Department for Transport (DfT) issued guidance on the removal of qualifying authority status, in which the criteria for removing a qualifying authority status is set out. The general premise of the document is that the DfT will consider removing this status from a qualifying authority if the authority repeatedly fails to expedite requests for approval within the 8-week timescale set out in the HS2 Act, or repeatedly or seriously fails to act in accordance with all the requirements of the Planning Memorandum and an insufficient attempt to rectify the situation is made by the qualifying authority.

The removal of the status of a qualifying authority is a five-stage process which is expected in only exceptional circumstances. However, given the HS2 scheme is only just commencing and the DfT has not established firm criteria as a benchmark, it is difficult to assess how stringent the DfT is going to be in enforcing this power. In the meantime the Council should consider the Schedule 17 application in accordance with the HS2 Act and supporting guidance to ensure compliance with its qualifying authority status.

**September 2020**