

PROTOCOL FOR PLANNING APPEALS

The purpose of the protocol is to provide a guide to Members and Officers of the Council in the event that an appeal is received following a decision of the Development Management Committee/ Planning and Licensing Committee to refuse an application contrary to the officer recommendation. It is perhaps worth emphasising that it is entirely lawful for a Committee to refuse an application where they are satisfied that they have good planning reasons, supported by substantive evidence and policy to do so, otherwise the Council will be at risk of a Costs application in respect of any unsubstantiated reason for refusal. This Protocol is not intended to dissuade Members from making such decisions.

Following the decision being made to refuse planning permission the following steps will be arranged by the Development Manager;

1. Within 2 weeks of the decision, Officers meet with ward members to discuss the likely appeal strategy in advance of any formal appeal submission to determine the best procedure to deal with any subsequent appeal, including which officers or Councillors may be called as a witness.
2. In the event that the LPA considers its officers are unable to represent the Council at the appeal because of the professional recommendations initial arrangements will be made for external representation, this maybe Cornwall Council's appeals team or other external source.

On receipt of notification from the agent or Planning Inspectorate (PINS) that an appeal has been lodged the steps below shall be followed. It must be noted that the Start Date letter sets out the timetable to which the Council must adhere in accordance with the Inquiries Procedure Regulations. Failure to meet the deadlines can lead to an award of costs being made by the Appellant in that the Council has acted unreasonably and caused unnecessary expense.

- (a) Within 1 week will arrange for a meeting to be held between the Chairman, Ward Councillors and [Portfolio Holder], the DM manager, case officer, solicitor to attend. Representatives from other services, eg housing, environmental health, landscape and leisure and property will be invited by the Case officer if the reasons for refusal relate to their areas of expertise. This meeting will determine the grounds on which the appeal will be fought and which witnesses should be called to present the Council's case.
- (b) At this meeting the case officer/DM manager shall have regard to the timetable and set out a programme for managing the case so that the documents required by PINS are sent in accordance with the timetable. Sufficient time will be given to ensure that draft statements are circulated and the Statement of Common Ground is agreed by all witnesses' prior to being submitted. This programme shall be followed irrespective of any duplicate application that is being considered by the LPA.
- (c) This meeting shall also consider whether it is necessary to instruct Counsel as advocate. In the event that this is the case the Council's solicitor shall on receipt of instructions from the case officer prepare a Brief to Counsel and

where possible arrange a conference prior to the Statement of Case being sent to PINS.

- (d) The extent of external representation will be agreed at this meeting and necessary instructions given. The DM manager will send a copy of the officer report and the minutes of the Committee meeting to the external body (CC)/agency which has agreed to manage the case on behalf of the LPA. The LPA case officer shall provide all necessary documentation from the planning files to the external Council/Agency. Written confirmation will be sought that the external Council/Agency will act on the LPA's behalf and estimated costs agreed.
- (e) It shall be agreed at this meeting whether members are to be witnesses for the Council. If so then officers will assist them in preparing their proofs of evidence. There will be a team approach.
- (f) Members can alternatively appear as a third party witness in the event that their reasons for refusal contradict the Council's policies as this should avoid an application for costs being successful.
- (g) [Members will be given advice on the appeals process if Public Inquiry or Informal Hearing. – Separate advice note]
- (h) The Council's solicitor will manage the Council's relationship with the barrister, including any liaison between Counsel and Members. The Council's solicitor will arrange any necessary conferences with Counsel. At least one will be held prior to the date of the Inquiry.
- (i) Arrangements for the Appeal hearing and all necessary notification will be managed by the Council's Development Management support team.
- (j) The DM manager shall be responsible for and will supervise the progress of the Council's appeal case until its conclusion.
- (k) Following receipt of the Inspectors decision a case review meeting will be held to discuss the outcome.

18th November 2013