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<b>Report To:</b>	<b>Environment &amp; Regeneration Committee</b>	<b>Date:</b>	<b>31 August 2023</b>
<b>Report By:</b>	<b>Head of Legal, Democratic, Digital &amp; Customer Services</b>	<b>Report No:</b>	<b>LS/073/23</b>
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<b>Subject:</b>	<b>Protocol and Criteria for Planning Board and Local Review Body Site Visits</b>		

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## 1.0 PURPOSE AND SUMMARY

1.1  For Decision  For Information/Noting

1.2 The purpose of this report is for the Committee to consider and approve a protocol for the Planning Board and the Local Review Body which sets out clearly, for all interested parties, including applicants and objectors, the procedures governing site visits undertaken by elected members in relation to matters coming before the Planning Board and the Local Review Body.

1.3 Having such a protocol is considered good practice and simply formalises the existing practices utilised. It will mean that all interested parties know the circumstances under which it might be determined that the holding of such a site visit would be beneficial and how such a site visit will be conducted.

## 2.0 RECOMMENDATIONS

2.1 It is recommended that the Committee approve the Site Visit Protocol set out in Appendix 1 to this report for use by the Planning Board and the Local Review Body.

**Iain Strachan**  
**Head of Legal, Democratic, Digital & Customer Services**

### 3.0 BACKGROUND AND CONTEXT

- 3.1 Members of the Planning Board and the Local Review Body sit in a quasi-judicial capacity, which requires the need for all applications before them to receive a fair and proper hearing, in accordance with the relevant law and regulations, and which must avoid any impression of bias. Such applications may have a material impact, direct and indirect, on the applicant and others, and may be the subject of intense scrutiny, both local and national. As such, there is a particular need for the Council to seek to ensure all such decisions are the subject of a suitable decision-making process.
- 3.2 The Planning Board has 10 scheduled meetings a year, while the Local Review Body meets when there is business for it to consider. In 2022, the Planning Board considered 12 separate planning applications for determination, and the Local Review Body 12 Notices of Review.
- 3.3 There are occasions on which either the Planning Board or the Local Review Body may find it helpful to undertake a visit to the site of the application prior to its determination.
- 3.4 As part of its detailed provisions on considering quasi-judicial matters, the Councillors' Code of Conduct (the Code) provides as follows in respect of site visits:-  
<https://www.gov.scot/binaries/content/documents/govscot/publications/regulation-directive-order/2021/12/code-conduct-councillors-2/documents/code-conduct-councillors/code-conduct-councillors/govscot%3Adocument/code-conduct-councillors.pdf?forceDownload=true>
- “7.13 In respect of any site visits that have been decided upon or agreed by the Committee as a stage in the consideration of the application,
- I WILL:
- a) follow my council's procedures for such visits as set out by my council and that with regard to any legislative requirements or notes of guidance or practice;
  - b) remember that such site visits are part of the decision-making process and as such are formal in nature and may have procedures as set out by my council.”
- 3.5 In addition, the Guidance on the Code, as part of its detailed provisions on considering quasi-judicial matters, provides (at paragraph 209) that:-  
<https://www.standardscommissionscotland.org.uk/uploads/files/1668421841220502CouncillorsCodeGuidance2022v1.pdf>
- 3.6 “The Code recognises that individual Councils will have their own procedures for site visits and does not attempt to be prescriptive about what these procedures should include. Some Councils will insist that you attend site visits if you are taking part in the final decision. This is particularly the case in relation to local review bodies carrying out site inspections under the planning legislation. As site visits can form part of the committee process, a degree of formality should apply, and you should behave accordingly. You must follow your Council's own procedures in making site visits as part of the committee process and must not give any impression during a visit that you have made your decision prior to the committee itself.”
- 3.7 In 2022 the Planning Board held 3 site visits (2 being in respect of a single application) and the Local review Body no site visits.
- 3.8 The Council currently has no written procedure for when and how site visits may be undertaken. The absence of such a procedure exposes the Council to legal risk around the determination of such applications, if it could be said that such a site visit, or lack of one, meant the application/review was determined in an unlawful manner.
- 3.9 As such, it is considered good practice that a local authority has such a procedure in place, and this is supported by the Code.

- 3.10 It should, however, be noted that site visits can cause delay to the decision-making process and can potentially lead to an application not being determined by the Planning Board and instead being referred to the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) on the basis of non-determination, if not determined by the Council within 4 months for national and major developments, and 2 months for local developments. Such a referral means that the Council is denied the opportunity to itself determine the application and can result in additional costs to the Planning Service and the applicants. It may also negatively affect the Planning Service's performance relative to its targets of 2 months for local planning applications and 4 months for major planning applications.
- 3.11 For these reasons, it is important that site visits are only undertaken where it is felt there is substantial benefit in holding one and are arranged timeously.

#### **4.0 PROPOSALS**

- 4.1 It is proposed that the Committee, as the relevant thematic decision-making Committee, approve the Site Visit Protocol set out in Appendix 1 to this report for use by the Planning Board and the Local Review Body.

#### **5.0 IMPLICATIONS**

- 5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

<b>SUBJECT</b>	<b>YES</b>	<b>NO</b>
Financial		X
Legal/Risk	X	
Human Resources		X
Strategic (Partnership Plan/Council Plan)		X
Equalities, Fairer Scotland Duty & Children/Young People's Rights & Wellbeing		X
Environmental & Sustainability		X
Data Protection		X

#### **5.2 Finance**

There are no financial implications directly arising from this report.

#### **5.3 Legal/Risk**

The adoption of the Site Visits Protocol will help ensure an appropriate and consistent approach to the use of site visits, and that without adversely affecting the transparency, fairness and openness of the associated decision making process by the Planning Board or the Local Review Body. Adherence to the Site Visits Protocol will also help ensure that such decisions are not biased, unlawful, irrational or procedurally improper, and so mitigate against the risk of judicial review, appeals to DPEA and/or complaints to the Scottish Public Services Ombudsman in respect of such decisions.

#### **5.4 Human Resources**

There are no human resource implications directly arising from this report.

#### **5.5 Strategic**

There are no strategic implications directly arising from this report

## 5.6 Environmental/Sustainability

There are no environmental / climate change impacts directly arising from this report. However, the adoption of the Site Visits Protocol will help support the determination of planning applications and/or reviews which come before the Planning Board/Local Review Body.

	YES – assessed as relevant and a Strategic Environmental Assessment is required.
X	NO – This report does not propose or seek approval for a plan, policy, programme, strategy or document which is like to have significant environmental effects, if implemented.

## 6.0 CONSULTATION

6.1 Members of the Planning Board and the Local Review Body, the Convenor of the Committee and the Director of Environment & Regeneration were consulted on this report.

## 7.0 BACKGROUND PAPERS

7.1 None.

## APPENDIX 1

### SITE VISITS PROTOCOL FOR THE PLANNING BOARD AND THE LOCAL REVIEW BODY

*This Protocol applies equally to the Planning Board and the Local Review Body, and references in it to the Planning Board should be read as references to the Local Review Body, as the case may be, subject to the additional section at the end of the Protocol which includes Additional Considerations only applicable for Local Review Body Site Visits.*

#### Site Visits

The Planning Board may decide to undertake a site visit following consideration of an item of business.

The date and time of the site visit will be set by Committee Services in consultation with the Chair, and where practicable the rest of the Planning Board, and will be carried out as soon as practicable after the Planning Board meeting, subject to the consent of any third party landowners/occupiers being first secured.

The primary purpose of the site visit is for Elected Members on the Board to view the site and gain a better understanding of the proposed development.

Only those members of the Planning Board who were present (including any attending in a substitute capacity) when the Planning Board decided to undertake a site visit may partake in that said site visit.

A site visit is a formal procedure which is carried out without influence of third parties. It must be treated as part of the Planning Board's consideration of the application in question and it is important that it is undertaken in a way that is demonstrably fair and unbiased. Members should always operate with the principles of the Councillors' Code of Conduct in mind. In particular, members will want to ensure that, in their actions on site, they demonstrate objectivity, integrity, honesty and respect. They should be alert to the potential perception that one party may be able to unfairly influence their considerations.

As such, no discussion on the merits of the proposal should take place on the site visit, nor should a decision be taken.

The Chair or Vice-Chair will lead the site visit and in their absence members present will vote for one of their number to act as Chair.

The running order of the site visit will follow these guidelines:

1. The Chair/Vice-Chair will formally open the site visit and set out the reasons for it, based on the minute of the Planning Board.
2. Planning/Roads Officers will then be invited to outline the proposed development and the main considerations relating to it.
3. Members will then view the site, relevant buildings and surroundings as necessary.
4. Members will be offered the opportunity to ask questions of, or seek clarification from, the Planning/Roads Officers.

5. As the site visit is a formal matter, the Legal Adviser to the Planning Board will also be present at the site visit.
6. When Members are satisfied that they have gained sufficient information from the site visit, and any questions to officers have been answered, the chair or nominated officer will draw the site inspection to a close.
7. A note will be made of the site visit, by the legal advisor, which will be minuted at the meeting of the Planning Board at which the application is next considered.

The applicant and/or their representative will only be invited to facilitate access to the site. Any health and safety instructions issued by officers, the site owners/occupiers or their representatives must be strictly followed. Where appropriate, protective clothing will be provided, and members should be aware of the need to wear appropriate footwear.

The applicant and/or their representatives will not be permitted to accompany the Planning Board on their site visit. Equally, no members of the public, including the applicant and those who have made representations, and/or their representatives, will be permitted to accompany the Planning Board on their site visit or enter into discussion with the site visit party regarding the merits or otherwise of the application. The site visit is not to be treated as an opportunity to debate the merits of the proposal.

Should any members of the public attempt to lobby members or disrupt the site visit in any way, then the Chair may ask officers to intervene; if this fails they may terminate the site visit if they have reasonable grounds for so doing. If such an event occurs, an alternative date and time for a site visit will be arranged.

Only those members who have attended the site visit, and all other occasions on which the Planning Board have considered the application in question, will be permitted to participate in the final vote on the matter.

### **Site Visit Criteria**

It is recommended that site visits are only used where the expected benefits are substantial, having regard to relevant policy and other material considerations. A 'substantial benefits' test should be applied in every case.

Site visits will be likely to deliver substantial benefits if the impact of the proposed development is difficult to visualise or comprehend, i.e. where lack of clarity with the application 'on paper' makes visual assessment of the site essential; for larger, more complex applications; where the proposed development raises unique or unusual considerations; or where the proposed development is likely to have a significant impact on the wider community.

Elected Members should also take into account the following considerations:-

Sits visits can:

- (1) cause delay to the decision making process;
- (2) in respect of applications being determined by the Planning Board, potentially lead to an appeal to the Directorate for Planning and Environmental Appeals on the basis of 'non-determination';
- (3) in respect of applications being determined by the Planning Board affect the Planning Service's performance in respect of its 2 month target (from the validation date), and 4 month target (from the validation date) for major developments; and
- (4) lead to additional costs both to the Planning Service and possibly to the applicant(s).

Site visits are not appropriate for the following cases:-

- (1) to consider objections based on disputes about boundaries or between neighbours;
- (2) to consider objections made on competition grounds;
- (3) to consider objections made on grounds which are not material planning considerations; and/or
- (4) where members of the Planning Board have already visited the site within 6 weeks, other than in exceptional circumstances.

The reason for a site visit will be clearly stated at the Planning Board and recorded in the minutes.

Following a site visit having been undertaken, the application will be determined as soon as reasonably practicable, and most likely at the next meeting of the Planning Board, or sooner if felt requisite by the Chair.

### **Additional Considerations for Local Review Body Site Visits**

There are additional considerations which are only relevant for site visits by the Local Review Body, and which also need to be taken into account.

Regulation 16 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 makes it clear that an inspection may be accompanied or unaccompanied by the applicant and any other party the Local Review Body considers should attend.

In deciding whether a site inspection should be accompanied or unaccompanied the Local Review Body should consider whether the further information required can be obtained on the basis of an unaccompanied inspection. Situations where it may be preferable for a site visit inspection to be accompanied are:

- To obtain physical access to the site or premises. If this involves the Local Review Body meeting the applicant, then consideration should be given to an accompanied site inspection in order to avoid any perception of bias;
- Where there is a need to view or access the site from private land or property (for example, from a neighbour's home), the Local Review Body may seek an accompanied inspection to avoid any suggestion that they have been unduly influenced by that contact; and/or
- Where the presence of parties is necessary to identify or explain a particular feature of the site, development or location.

If an inspection is to be accompanied, reasonable notice of the date and time of the inspection must be given to the applicant and any interested parties.

**Approved by the Environment & Regeneration Committee on TBC 2023**