

# Protocol On Planning Matters For Members And Officers

June 2013 (Revision)

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# Protocol on Planning Matters for Members and Officers

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### 1. Introduction

- 1.1. Various reports into standards of conduct in public life and the Localism Act 2011 have emphasised the need for high standards in all aspects of local authority business, including planning matters. It is essential that all persons having contact with the Council in relation to these matters should have confidence that the conduct of members and officers is consistent and fair to all parties. It is also essential that all members and officers involved in the planning process are clear on the standards which are expected of them.
- 1.2. The role of the Planning Applications Committee in determining applications is a quasi judicial function and decisions taken by members can be challenged in law. It is therefore particularly important that guidelines are agreed as there can be far-reaching consequences for the Council and for individual members and officers, if correct procedures are not followed. Members of the Committee must be seen to determine applications fairly having regard to national and local planning policies, the statutory development plan and other material planning considerations.
- 1.3. All actions of members and officers should be based (where appropriate) on the Council's Code of Conduct, the Royal Town Planning Institute's Code of Professional Conduct and other advice issued by the Local Government Association and the Local Government Ombudsman
- 1.4. The purpose of this protocol is to give guidance on some of the issues which most commonly arise. It is not intended to cover every eventuality. Any member or officer in any doubt as to their position should in the first instance contact the Executive Director and Monitoring Officer.
- 1.5. This protocol has been agreed by the Council and should be followed in respect of all planning matters. A failure to follow any part of the protocol could have a significant impact on the Council's ability to defend its actions in the case of legal challenge or a charge of maladministration.

## MEMBERS' CODE

### 2. Pre-Application Discussions

- 2.1. Local planning authorities are encouraged to enter into pre-application discussions with potential applicants. In addition, negotiations and discussions are likely to continue after an application has been submitted. Such discussions can often be interpreted by the public, and especially objectors, as prejudicing the planning decision making process.
- 2.2. In order to allay such perceptions, pre-application discussions should take place within clear guidelines as follows:

- 2.2.1. Pre-application discussions should generally be conducted at Officer level. In the case of major planning applications, a Ward Member who is not a member of the Planning Applications Committee should be invited to participate. If the application site is within a single Member ward, and that Ward Member sits on the Planning Applications Committee, then the said Member shall be entitled to appoint an alternative Member to take their place in such discussions but shall not themselves take part.
- 2.2.2. It will always be made clear at the outset that any discussions are on a without prejudice basis and that any views expressed by Officers are personal and provisional.

### **3. Lobbying and Predetermination**

- 3.1. Lobbying, or seeking to influence a decision, is a normal part of the political process. However, where lobbying takes place in respect of planning applications to be determined by the Planning Applications Committee in its role as a quasi judicial body, it can lead to the impartiality of members of that Committee being brought into question and may as such give rise to a ground of challenge in the High Court. Members of the Planning Applications Committee should therefore be aware of any attempt which may be made to influence their decision by way of lobbying and should at all times follow the guidelines set out in 3.3 below. There is always a clear need for Members of the Planning Applications Committee to declare at the appropriate meeting when lobbying or an attempt at lobbying has taken place on an item.
- 3.2. Predetermination occurs when a decision maker prejudices an application before the matter is debated at the Planning Applications Committee in the presence of fellow Members and interested parties. It may or may not be as a direct result of lobbying. Predetermination may also give rise to a ground of challenge. In view of the decision making role of the Planning Applications Committee, no Committee Member should indicate support or opposition to a specific development proposal or particular planning application, or declare their voting intention, before the meeting at which a decision is to be taken. To do so without all relevant information and views may well be viewed as unfair and prejudicial and may amount to predetermination. Examples of persons or groups who may indulge in lobbying include developers and professional groups, unrepresented applicants, landowners, objectors and action groups.
- 3.3. In general terms, the following guidelines should be followed:
  - 3.3.1. Members of the Planning Applications Committee should avoid giving guidance to any applicant or potential applicant for planning permission and should refer the applicant to the Planning Applications Manager if further information or advice is needed.
  - 3.3.2. Members and officers may be asked to express an opinion on a planning proposal, but care should be taken in so doing. Members of the Planning Applications Committee should avoid discussions with applicants and should not declare how they will vote on a matter as they are required to keep an open mind until all the facts are known and they have considered all relevant advice and the result of consultation. Any person lobbying, either for or against an application, should be advised to write to the Planning Applications Manager so that their representations can be included in any officer's report.
  - 3.3.3. Members of the Planning Applications Committee should only visit sites on organised site visits arranged prior to the Committee taking place. If

members of the Planning Applications Committee choose to make a personal visit (alone or with other Members) to a site prior to attending Committee, they must have regard to the principles outlined above and in order to ensure openness and fairness they should consider whether to visit a neighbouring objector's property also. In deciding whether to make such visits, members should consider the inherent risk that the applicant (or their agent) or objectors, could be perceived as exerting undue pressure on members to support or refuse an application and that a challenge of bias as a result of lobbying and predetermination may follow in respect of any decision made.

- 3.3.4. Members of the Planning Applications Committee must not organise support or opposition (internally or externally) to a planning application as this will make it difficult for a member to argue convincingly when the decision is to be taken at Committee that they have carefully weighed the arguments and evidence presented.
- 3.3.5. Applications must be determined on their merits at the Committee in the light of all relevant information. For example, a political group meeting must not be used to decide how members should vote on a planning application.
- 3.3.6. Any members of the Planning Applications Committee individually receiving late representations in respect of an application must pass these immediately on receipt to the Chair/Planning applications Manager so that these may be taken into account during consideration of the application.
- 3.3.7. Members of the Planning Applications Committee should not accept personal invitations from applicants, developers and agents to attend meetings and presentations to promote major development proposals. If, notwithstanding this advice, members decide that they are going to accept such an invitation they should first request the attendance of an officer. If an officer is not available a member would be strongly advised not to attend alone.
- 3.3.8. Where members of the Planning Applications Committee have attended any formal meeting, personal site visit or presentation involving a developer and/or agent, they should inform the Executive Director and/or the Executive Director and Monitoring Officer and if and when the development proposal comes before the Committee, make their contact known.
- 3.3.9. Members of the Planning Applications Committee should not allow themselves to be lobbied by any applicant or other persons during Committee meetings or during any breaks or adjournments in such meetings.

#### **4. Declarations of Interest**

##### **4.1. Disclosable Pecuniary Interests and Other Interests**

Councillors must always declare any Disclosable Pecuniary Interest or Other Interests, as defined in the Code of Conduct for Members, in relation to any matter under discussion. In the case of Disclosable Pecuniary Interests they should withdraw from the meeting prior to the consideration of that item and not take part in the discussion or voting on the matter.. In the case of Other Interests councillors should consider whether the nature of that interest is so significant (e.g. prejudicial) that they should withdraw from participating in respect of the matter relating to that interest and not take part in the discussion or voting on the matter.

- 4.2 In the planning sphere in particular, it is important that relevant interests are declared. Members of the Planning Applications Committee must not favour any

particular person, company or group, nor put themselves in a position where they appear to do so.

4.3 Examples where Other Interests may be prejudicial include:

- Close personal friendship with an applicant for planning permission or an objector, or person with an interest.
- Membership of the same club or organisation as some other person, which common membership the member is aware of and which is such that close acquaintanceship might reasonably be inferred.
- Regular and close business dealings with a person involved in the application.
- Living or running a business in close proximity to a particular site such that you might be affected by any proposals for that site (other than an interest shared with other members of the public generally as a Council Tax payer or inhabitant of the area).

4.4 Members who have a Disclosable Pecuniary interest should also refrain from discussing the matter with other Members or with Officers. Further, a Member with a Disclosable Pecuniary interest in a matter, who does not sit on the Planning Applications Committee, may not take part in any discussion concerning that matter, nor be present in the public gallery while any discussions take place.

**Note:** This list of examples is not exhaustive and ultimately the responsibility for declaring any interest lies with the member.

## 5. Planning Applications Committee Procedures

5.1. The procedures governing the conduct of Council and Committee meetings are set out in their Procedure Rules. The Planning Applications Committee has its own special procedure rules fully detailed in the Constitution. However, the general public who attend these meetings will not usually be familiar with the Procedure Rules. So far as they are concerned, it is important to give the impression of an orderly meeting, where it is clear that decisions are being made on matters which are relevant and that members and officers fully understand the reasoning.

5.2. The following examples should assist in this aim:

- 5.2.1. Structured reports to Committee for planning applications shall set out all relevant points, development plan policies, site or related history, and other material considerations.
- 5.2.2. Reports should include a summary of objections to applications and the views of bodies that have been consulted.
- 5.2.3. Reports should generally contain details of all material considerations, together with a full account of all options considered with regard to any application and a clear recommendation from the Planning Applications Manager (either to approve or refuse) together with an explanation of the reasons for that recommendation.
- 5.2.4. Members must not put pressure on officers for a particular recommendation which may run contrary to their professional opinion and thereby prejudice their professional integrity. Doing so may be regarded as a breach of the Member Code of Conduct. The recommendation and the decision are

separate parts of the same process which should be justified by the report and the debate respectively.

- 5.2.5. Verbal updating of reports should be carefully minuted particularly when this leads to a change in the officer's recommendation in the report.
- 5.2.6. If the officer's recommendation is contrary to the Development Plan, the material considerations which justify this must clearly be stated.
- 5.2.7. When members resolve to approve a proposal which is contrary to planning policy, the application will be advertised as a "departure" application. When appropriate the application will be referred to the Secretary of State in accordance with government regulations.
- 5.2.8. Where the Committee decides to delegate a decision to Officers, or Officers in consultation with Members, this should be clearly specified and the arrangements detailed in the minutes.

## **6. Reasons for Decisions at Planning Applications Committee Meetings Contrary to Recommendations**

- 6.1. Clear and sound planning reasons will need to be given by the member proposing a motion in the following circumstances:
  - 6.1.1. In the case of a refusal of an application where approval has been recommended.
    - Note:** 1. On appeal, in such a case, members must be prepared to justify their decision at any hearing as officers cannot be required to contradict earlier professional advice when defending the decision of Committee.
    - 2. Decision notices issued to applicants contain reasons for approval/refusal of an application.
  - 6.1.2. In the event of an application being approved by the Committee despite a recommendation for refusal.

## **7. Committee Site Inspections**

- 7.1. The Council has agreed that Members of the Planning Applications Committee will, in the morning prior to the meeting of the Committee (or at another time to be agreed), visit sites which are to be the subject of applications to be determined by the Committee at that meeting.
- 7.2. The order in which the sites shall be visited may be varied by agreement between the Chair and Planning Applications Manager.
- 7.3. The purpose of the site inspection is to enable the Committee to appraise the site and obtain clarification on matters of fact relating to the application site. A site may be visited where the impact of the development may be difficult to visualise from the plans and any supporting material; or there is a good reason why the comments of the applicants or objectors cannot be expressed adequately in writing or the proposal is particularly contentious. The site inspection is not a public meeting. No drawings, letters of representation or other documents which have not been previously submitted may be presented at the site meeting by any party.

- 7.4. The procedure will be as follows:-
- 7.4.1. A coach carrying Members of the Committee and District Council Officer(s) will arrive at the site(s) during the period of the Committee meeting day allocated for site inspections (or other day by agreement).
- 7.4.2. Neither Members nor Officers will enter any private land unless prior agreement to do so has been obtained. If an applicant, owner or agent is present on site the Chair and an Officer will introduce themselves and thank them for the right of entry. They will be advised of the site inspection procedure.
- 7.4.3 The Chair will call the Members to order and request the Planning Officer present to summarise:-
- the application;
  - any relevant site history;
  - the features of the site;
  - any other relevant planning issues.
- 7.4.4 Any advisory representative of the County Council will (if requested to attend) be invited to speak.
- 7.4.5 Members of the Committee may at this time point out any relevant features of the site. Such points must be factual and not opinions and Members of the Committee must not debate the merits or otherwise of the application.
- 7.4.6 An opportunity will be given for Members to ask questions through the Chair to the Officers.
- 7.4.7 The applicant, the applicant's agent or any third party including any local ward members who are not members of the Committee on site, will not be allowed to make any representations during a site inspection. However, the Planning Officer may address any of those parties present for clarification of matters of fact.
- 7.4.8 The site meeting will be conducted with all those attending remaining together as a single group throughout. Members of the Committee should, as far as practicable, attend all site inspections so that they have all material facts before them when determining the application.
- 7.4.9 On the conclusion of the inspection, the Chair will terminate the visit and Members will depart.

## **8. Role of Committee Chair and Vice-Chair**

- 8.1. In order to aid the smooth running of Committee business, a briefing will be held for the Chair and Vice-Chair shortly in advance of each meeting.
- 8.2. Officers will keep the Chair and Vice-Chair fully informed of progress on all major planning applications and of other situations which arise which are out of the ordinary.
- 8.3. The order of the Committee agenda may be changed at the discretion of the Chair. Where in advance of the Committee it is known that an item is to be deferred or that

the order of the Agenda is to be altered, the Chair will advise of this prior to the commencement of the meeting.

## **9. Role of Local Member**

- 9.1. Members are supplied on a weekly basis with lists of planning applications and of applications determined under delegated powers. Any member may request in writing that any application should be referred to the Committee for determination if there are planning reasons for doing so which must be specified.
- 9.2. Officers will keep members fully informed with regard to major planning issues affecting their Wards provided a planning application has been lodged or the applicant gives permission for members to be informed. Officers will also provide any relevant background information that may be requested by members as soon as practically possible.
- 9.3. If a member (other than the Committee Chair or Vice-Chair) who is not the local ward member is asked to become involved in a planning matter, he/she should first endeavour to inform the local ward member(s) before attending any meeting or site visit, or taking any other action.
- 9.4. In determining planning applications at Committee, members must not base their decision purely on local issues. All decisions should be based on local and national planning policies, as well as taking into account the wider public interest.

## **OFFICERS' CODE**

### **10. Conduct of Planning Officers**

- 10.1. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of this Code may be subject to disciplinary action by the Institute and/or by the Council. Similar standards of professional conduct will be expected of any Planning Officers who are not members of the RTPI and such officers may be subject to disciplinary action by the Council if these standards are not maintained.
- 10.2. All Planning Officers must give professional and independent recommendations and care must be taken not to give advice which may fetter the Committee's decision making role.
- 10.3. Planning Officers who work closely with members, applicants or objectors, have to ensure that their professional judgement is not compromised by the nature of their relationships with such persons.
- 10.4. It should always be made clear that advice given by Planning Officers may be subject to review and may change in the light of any additional relevant information that might come forward.
- 10.5. Advice given should be consistent and based upon the current Development Plan, planning policy guidance and any other relevant material considerations.
- 10.6. A written note should be made and kept on file of all meetings with developers, agents, and interested third parties, and of any other meetings or telephone calls relating to an application.
- 10.7. Officers should also be aware that sometimes Committees decisions may go against officer recommendations and when that happens officers should try to help to carry



out the Committees decisions subject to avoiding contradiction of their professional advice.

**10.8. Interests of Officers**

10.8.1. Care should always be taken to avoid any suspicion that an officer recommendation may have been influenced by improper motives.

10.8.2. Any officer who has an interest (i.e. similar to those which apply to members under the Council's Code of Conduct) should immediately inform the Chief Executive who, will determine whether the officer should take any further role in relation to that matter.

10.8.3. If any person believes that an officer may have acted improperly, they should contact the Chief Executive without delay who will carry out an investigation in conjunction with the relevant departmental Director.

**11. Development Proposals Submitted by Members and Officers**

11.1. Members who act as agents for people pursuing a planning matter with the Council should take no part in the decision-making process for that proposal. Equally, should a member or officer submit their own proposals to the Council they should declare a Other Interest and take no part whatsoever in the matter.

11.2. Proposals which involve an officer or member (either personally or as an agent) will always be determined by the Committee and not dealt with under delegated powers.

11.3. The fact that a declaration of interest has been recorded should be identified on the relevant planning files and in the appropriate Register of Interests held by the Executive Director and Monitoring Officer.

**12. Social Contacts with Developers and Agents**

12.1. Planning Officers should decline any gifts or other hospitality offered by people with an interest in a planning proposal or who are likely to be involved in planning proposals in the future.

12.2. Members of the Planning Applications Committee should decline any gifts or other hospitality offered by people with an interest in a planning proposal. In the event of a member who does not sit on the Planning Applications Committee being offered a gift or other hospitality, this must be declared promptly as an attempt at lobbying in accordance with Rule 3 of this Protocol.

12.3. Planning Officers and members of the Planning Applications Committee should, so far as possible, avoid social contacts with known developers and agents, particularly when new developments are being considered or planning applications put forward.

12.4. In the event of a Planning Officer or member of the Planning Applications Committee having significant social contact with a developer or agent, he/she should declare an Other Interest, in accordance with guidance set out in this protocol.

**13. Public Access to Information**

13.1. Open and transparent decision making is central to the planning process. Virtually all planning matters coming before the Committee should be considered in open session, the principal exceptions to this being situations where it is necessary to give

the Committee confidential legal advice or in other circumstances which are regarded as confidential or exempt by law.

- 13.2. All planning application files are open to public inspection. Members of the public requiring extensive information on a particular matter are encouraged to make a prior arrangement with the relevant Planning Officer for a file to be made available at a particular time.

