

# Planning Codes and Protocols

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## Part 5: Codes and Protocols

### Section 5 - Protocol on Good Practice in Planning for Members and Officers Dealing with Planning Related Issues

#### 1.0 Introduction

- 1.1 Planning was first identified as probably the most contentious matter that local government dealt with in 1997 by the Third Report of the Committee on Standards in Public Life (known as the Nolan Report). The Nolan Report recognised that the planning process put elected councillors into the position of taking decisions within a legal framework but also being required to exercise their representational role on behalf of their constituents. Those who lost out frequently blamed the process itself.
- 1.2 The Nolan Report therefore concluded that local authorities should examine how their planning processes matched up to best practice.
- 1.3 The Local Government Association published a guidance note intended to provide helpful advice for local authorities to use to frame local codes of good practice on the conduct of members in making planning decisions.
- 1.4 District Audit reviewed probity in planning at more than 150 local authorities across the country and issued a bulletin on its findings, including examples of notable practice.
- 1.5 This protocol was prepared considering all the above documents and its purpose is set out best practice for both councillors and officers involved in the planning process to follow to ensure that, in dealing with planning matters, the Council not only acts openly, transparently, fairly and without bias but is also seen as doing so.

- 1.6 Whilst this protocol deals primarily with planning applications the principles apply equally to consideration of structure plans, local plans, development briefs, enforcement cases and all other planning matters.
- 1.7 This protocol is part of the Council's constitution, and all members and officers are expected to comply strictly with its provisions. Any breach of the protocol may be referred to the Standards Committee.
- 1.8 This protocol is in addition to and takes account of the ethical framework as introduced by the Local Government Act 2000, and changes introduced by the Localism Act 2011.

#### 2.0 General Role and Conduct of Councillors and Officers

- 2.1 Councillors and officers have different but complimentary roles. Both serve the public, but councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. The Council's reputation as a successful local planning authority can only be based upon a mutual trust between councillors and officers and an understanding of each other's positions. This relationship, and the trust which it underpins must never be abused or compromised.
- 2.2 Legislation emphasises the overriding requirement that the public are entitled to expect the highest standards of conduct and probity by all persons holding public office and in particular that when dealing with planning matters only material planning considerations are taken into account. There are statutory provisions and codes setting standards which must be followed if the public perception of the integrity of public service is to be maintained and improved.

- 2.3 Section 70(2) of the Town and Country Planning Act 1990 and Section 38A of the Planning and Compensation Act 2004 requires that all planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework ("NPPF") is a material consideration. The NPPF stresses the importance of having a planning system that is genuinely plan-led. Paragraph 11 of the NPPF provides for a presumption in favour of sustainable development.
- 2.4 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Whilst councillors should take account of these views, the overriding principle is that members should not favour any individual or groups and must represent their constituents as a body and vote in the interests of the district as a whole. Whilst members should take account of all views expressed, they should not favour any person, company, group, or locality nor put themselves in a position where they appear to do so. Members who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning Committee.
- 2.5 Members must comply with the provisions of the Members' Code of Conduct which has been adopted by the Council which sets out the requirements on councillors in relation to their conduct. The Code not only covers issues central to the preservation of an ethical approach to council business but also appropriate relationships with other members, staff and the public which will impact on the way in which members serving on the Planning Committee participate in the planning process. There is a requirement that members must not use or attempt to use their position as a member to improperly confer advantage or disadvantage for themselves or for any other person.

- 2.6 Officers involved in the processing and determination of planning matters must act in accordance with the Code of Conduct for Employees and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct whether or not such officers are members of the Institute.
- 2.7 Despite the provisions of the Members' Code of Conduct and Code of Conduct for Employees, members and officers involved in planning matters should not accept gifts or hospitality. If, however, a degree of hospitality is unavoidable it should be ensured that this is of a minimum and its receipt is declared as soon as possible. Members and officers should notify the Monitoring Officer of such hospitality. In all cases details must be entered in the appropriate Register of Gifts and Hospitality.
- 2.8 Officers must always act impartially.

### 3.0 Training and Development

- 3.1 The Council is committed to a culture of continuous improvement in all of its services and will ensure that officers and members involved in the planning process receive proper training/development to ensure that they are able to undertake their respective roles.
- 3.2 Members will be required to attend initial training/development sessions when first serving on the Planning Committee (normally within three months of appointment). Members will be required to attend refresher training every year. Members who do not participate in training will be excluded from serving on the Planning Committee.
- 3.3 Any member who may be asked to serve as a substitute on the Planning Committee will also be required to attend training/development sessions on the same basis as appointed members of the Committee.

- 3.4 In addition to on-going training/development sessions, members will be updated regularly on changes to legislation, procedures, and practices.
- 3.5 Training/development courses will continue to be provided from time to time to ensure that members maintain the necessary skills and expertise to fulfil the planning functions to the best of their ability and in accordance with all relevant requirements.

#### 4.0 Registration and Declaration of Interests

- 4.1 Members and officers undertaking the Council's planning functions have a duty to act fairly and without bias at all times and to be seen to be so doing. All steps should therefore be taken to ensure that their actions do not infer impropriety of any sort.
- 4.2 Chapter 7 of the Localism Act 2011 and the Members' Code of Conduct place requirements on members about the registration and declaration of their interests and the consequences for the member's participation in the consideration of an issue, in the light of those interests. These requirements must be followed scrupulously, and members should review their situation regularly. Guidance on the registration and declaration of interest may be sought from the Council's Monitoring Officer, although ultimate responsibility for fulfilling the requirements rests individually with each member.
- 4.3 A Register of Members' Interests will be maintained by the Monitoring Officer and will be available for public inspection. A member must provide the Monitoring Officer with written details of relevant interests within 28 days of election or appointment to office. Any changes to those interests must be similarly notified within 28 days of the member becoming aware of such changes.

- 4.4 Members who declare a "pecuniary interest" must not participate in the discussion and voting on the matter. Under the Members' Code of Conduct members are also required to withdraw from the room as stated in the Standing Orders of the Council.
- 4.5 Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (No. 1464) and set out in the Members' Code of Conduct.
- 4.6 Care must be taken by members to ensure that they retain an open mind when considering planning matters. If a member, in advance of the decision-making meeting has taken a firm view on the planning matter, either in meetings of another body or otherwise, they would not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account. They would have fettered their discretion and were they to participate in a decision in those circumstances they might place the Council in danger of judicial review.

#### 5.0 Development Proposals by Councillors and Officers

- 5.1 Proposals by serving and former members and officers and their friends and relatives can give rise to suspicions of impropriety. Care must be taken to ensure that such matters are handled as follows to avoid giving grounds for accusations and favouritism:
- no member or officer who submits his/her own application should take any part in the decision-making process and should not seek improperly to influence a decision about the matter. Serving members who act as agents for people pursuing planning matters within the Council should likewise play no part in the decision-making process for those proposals and should not seek improperly to influence a decision about the matter.

- a system will be in place within the Planning Team to identify such proposals immediately after they are submitted, and the Planning Manager will be informed of such proposals.
- applications by councillors and officers and their close friends and relations will not be dealt with by officers under delegated powers but will always be reported to the Planning Committee for determination. As part of the report to the Committee the Planning Manager will confirm that the application has been processed normally in all respects.
- no officer shall act as agent for any third party in submitting an application for planning permissions.

## 6.0 Councils Own Development

- 6.1 Proposals for the Councils own development should be treated in the same way as those of private developers. This paragraph also applies to private planning merits and without regard to any financial or other gain that may accrue to the treating Council if development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.

## 7.0 Lobbying of and by Councillors

- 7.1 Lobbying is an attempt to influence a member's view in order to achieve a particular decision. It is a normal and perfectly proper part of the political process and enables local concerns to be brought to the attention of the decision maker.

Great care must, however, be taken to maintain the integrity of the Council and its members as well as the public perception of the planning process. Any member of the Planning Committee who has been lobbied should declare this when the planning application is under consideration at a meeting of that Committee.

- 7.2 Members involved in the decision making on planning matters should not organise support or opposition to a proposal, lobby other members, act as an advocate or put pressure on officers for a particular recommendation. However, other members, who are not part of the decision-making process, within that member's ward can make representations and address the relevant committee but must not put pressure on officers for a particular recommendation.

Members of the Planning Committee who make representations in respect of applications in their own ward may only participate in the final decision if it can be shown that their comments have not prejudiced the requirement that they keep an open mind and consider all relevant information before determining the application.

- 7.3 Members involved in determining planning matters who find themselves in a lobbying situation should actively take steps to explain that, whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another.
- 7.4 Circulation of unofficial papers at a committee meeting constitutes lobbying. Planning applications must be determined on the basis of the documents and information formally submitted. Only submissions from applicants, agents, or objectors, which are formally received by the Planning Team can properly be taken into account in making a decision. The Committee could be materially misled if members or other parties circulated unofficial documents or introduced new information on behalf of an applicant or objector or

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expressed what they believed to be an applicant's intention if this did not form part of the application documents and correspondence which had been submitted to the Planning Team. Consequently, the only documents which may be taken into account in determining a planning application are those submitted formally to the Planning Team in connection with the application under consideration. Councillors, applicants or third parties must not therefore circulate other papers to members prior to or during a meeting of the Planning Committee. All documents need to be seen by the Council's officers so that they can be properly assessed. Taking into account letters or documents which have not been submitted as part of the application could result in the Council's decision being challenged.

## 8.0 Predetermination

**8.1** Planning decisions must be made strictly in accordance with the facts as submitted, the Development Plan and other material considerations in each case. Members must not only act in a way that is fair to all parties but must be seen to do so. Members must not prejudge proposals before considering all of the evidence and arguments. Members who fully commit themselves to a particular view on a planning issue prior to its consideration at committee must consider whether the public, or any other person, would believe that they have prejudiced their position and can take part in a debate on the full facts before determining the application. If the member feels that the public would believe he/she had come to a conclusive view on the planning matter or application before the meeting, then he/she should not take part in the debate on or vote on the issue.

- 8.2** Members who will be involved in the determination of a planning matter may, prior to the meeting where the matter is determined, listen to a point of view about a planning proposal and where the applicant requires planning or procedural advice then refer the person in question to officers. Members must not indicate or give the impression of support or opposition to a proposal in a manner which suggests he/she has a closed mind to any views or further information which may be available at the meeting at which the planning matter is discussed. It is of paramount importance that councillors do not declare their voting intention before a meeting at which a decision is to be taken. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration.
- 8.3** Decisions on planning applications must not be taken in political group meetings prior to a committee meeting. The view of the Ombudsman is that the use of the political whips to seek to influence the outcome of a planning application could amount to maladministration. It could also give rise to a legal challenge of any decision by judicial review.
- 8.4** Whilst councillors involved in making decisions on planning matters will begin to form a view as information becomes available, a decision can only be taken at the Planning Committee when all available information is to hand and has been considered. Individual members should reach their own conclusions on an application or other planning matter rather than follow the lead of another member. Decisions can only be taken after full consideration of the officer's report and information and discussion at the committee meeting. In other words, you can be predisposed towards a particular outcome, but you cannot be predetermined.

## 9.0 Pre-Application Discussions

- 9.1 Councillors should not seek to advise applicants or agents about the likely acceptability of planning proposals. They should advise prospective applicants to contact the appropriate officer for advice on both merits and procedures. Pre-application discussions between a potential applicant and the Council can benefit both parties and are encouraged. The Localism Act 2011, particularly s.25, allows Councillors more freedom to engage in pre-application discussions bringing with them their local knowledge and expertise, along with an understanding of Community views.
- 9.2 In any discussions on planning issues, it will always be made clear at the outset, that such discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional and do not commit the Council to any particular decision. All officers and Councillors taking part in such discussions will make clear whether or not they are the decision maker.
- 9.3 Advice given will be consistent and based upon the Development Plan and other material planning considerations. Every effort will be made to ensure that there are no significant differences of interpretation of planning policies amongst planning officers.
- 9.4 Councillors should always be accompanied by officers in pre-application meetings. Councillors should avoid giving separate advice on the Development Plan or material considerations. Councillors should not be drawn into any negotiations. These should be done by officers to ensure that the Council's position is co-ordinated.

- 9.5 A written note will be made of pre-application discussions and two or more officers will be present at potentially contentious meetings with a follow up letter sent, particularly when material has been left with the Council. A written note must also be taken of potentially contentious telephone discussions. These written notes will be put on the application file and will constitute Background Papers for the purposes of the Access to Information Act.
- 9.6 Every effort will be made to ensure that advice is not partial, nor seen to be.
- 9.7 To maintain impartiality members of the Planning Committee and the pool of substitutes must not have discussions with applicants or agents in connection with planning applications or enter into negotiations about such proposals either prior to or after the submission of an application, unless at least one professional officer is present. Such meetings must be arranged by or on behalf of the Planning Manager who will inform the Chairman of the Planning Committee and will ensure that the appropriate officers are present. The involvement of members in such discussions will be recorded as a written file record.

## 10.0 Officer Reports to Committee

10.1 Reports to committee on planning matters must:

- be accurate and cover, amongst other things, the substance of any objections and the views of those consulted.
- Include a clear exposition of the development Plan, relevant parts of the National Planning Policy Framework, any local finance considerations, and any other material considerations
- have a written recommendation of action
- contain technical appraisals which clearly justify a recommendation
- clearly state the material considerations which justify a departure from the Development Plan if the report's recommendation is contrary to the provisions of the Development Plan.

10.2 Oral reporting (except to update a report) will only be used on rare occasions and carefully minuted when it does occur.

## 11.0 Public Speaking at Committees

11.1 At meetings of the Planning Committee applicants/agents, parish councils and other interested parties will only be allowed to address members in accordance with the Council's scheme for public speaking at meetings of the Committee.

## 12.0 Decisions Contrary to Officer Recommendations and/or the Development Plan

12.1 The law requires that, where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.

12.2 In discussing and then determining a planning application or other planning matter, members must confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing and supported by planning evidence. If members wish to refuse an application against officer advice or impose additional conditions to a permission, the reasons for refusal or the additional conditions to be applied must be clearly stated at the time the propositions are moved at the meeting.

12.3 If the Planning Committee makes a decision contrary to the recommendation of the Planning Manager (whether approval or refusal), a detailed minute of the Committee's reasons, which must be clear and convincing, will be made and a copy placed on the application file. Officers should be given an opportunity to explain the implications of the contrary decision. The personal circumstances of an applicant will rarely provide grounds for a contrary decision.

12.4 Conscious of the public arena in which planning decisions are made, members must conduct the business of the Planning Committee in a fair and sensitive manner.

12.5 If the report of the Planning Manager recommends approval of a departure from the Development Plan, the justification for this should be included, in full, in that report.

12.6 Senior officers from the Planning and Democratic Services/Legal Teams should always attend meetings of the Planning Committee to ensure that procedures have been properly followed.



## 13.0 Committee Site Visits

- 13.1** The decision to hold a site inspection will be made by the Planning Committee taking account of the following criteria:
- “Site visits shall be restricted to those application sites where it appears essential and a case is made out beforehand sufficient to justify the delay entailed before the application in question can be determined, the reason for each site inspection to be recorded in the minutes.”
- 13.2** If a site inspection is recommended by officers, the recommendation must contain the case for the site inspection which justifies the delays in determining the application.
- 13.3** The recorded reason for the site inspection will give a clear brief to the members who will undertake the site inspection, and a clear explanation to the applicant and other interested parties.
- 13.4** The applicant (or agent if there is one) will be advised by letter of the Planning Committee’s decision to hold a site inspection, and the recorded reason. That letter will be sent no later than the second working day following the Committee’s decision and will include paragraphs:
- explaining how the site inspection will be conducted
  - requesting permission to enter the application site (if relevant)
- 13.5** The letter will be followed by a telephone call to confirm agreement to enter the site and the detailed arrangements to obtain access.
- 13.6** The order in which site inspections are made will be determined by the Planning Manager, following consultation with the Chairman of the Planning Committee. The main objective will be to achieve an efficient route for the journey between sites.

- 13.7** The site inspection will be “chaired” by the Chairman of the Planning Committee or, in his absence, the Vice-Chairman, but it will not be a formal meeting. Appropriate officers will attend to advise and answer questions.
- 13.8** On arriving at the application site, members are required to leave the coach and before entering the site, members will receive from officers an introductory briefing about the site, the proposal, and the reason for their inspection.
- 13.9** Members will then view the application site and inspect the submitted plans. On-site discussion and questions to officers will be related to the purpose of the inspection; formal consideration of all issues relevant to the application takes place at the meeting of the Planning Committee. Under the leadership of the Chairman members must remain together during the inspection in order that the information which is available is shared by all.
- 13.10** Where appropriate, an officer will speak to the occupier of any property which it is intended to enter, to explain proceedings.
- 13.11** The applicant, and other interested parties may listen to the proceedings, but no communication will take place between members and those other parties.
- 13.12** In some cases (e.g., when inspecting business premises), it may be necessary for members to be accompanied by the applicant or a representative in the interests of safety or security. In such cases paragraph 13.10 still applies.
- 13.13** Formal consideration and determination of the application will take place at a meeting of the Planning Committee.
- 13.14** Members who have been unable to attend the formal site inspection with the Committee will not participate in the determination of the application.
- 13.15** Members will make every effort to inspect all the sites on the agenda. If this proves impossible, those sites not inspected will be given priority on the next agenda.

## 14.0 Regular Review of Decisions

- 14.1 The Performance Monitoring Panel will at least annually revisit a sample of implemented planning decisions to assess the quality of the decisions with a view to helping to improve the quality and consistency of decision making, thereby strengthening public confidence in the planning system, and helping with reviews of planning policy.
- 14.2 Panel reviews should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes must be prepared on each case and the Executive member for development will formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

## 15.0 Complaints and Record Keeping

- 15.1 To enable any complaints to be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meeting and significant telephone conversations.
- 15.2 The same principles of good record keeping will be observed in relation to decisions by officers under delegated powers and in relation to enforcement and development plan matters.

## NOTE

### Members are also recommended to read:

- Positive Engagement – a guide for planning councillors produced jointly by the local Government Association, the Association of Council Secretaries and Solicitors, the Standards Board for England, Planning Advisory Service and the department of Communities and Local Government and the Planning Officers Society.
- Development Management Practice Project Guidance Note 3 – Councillors Involvement in pre-application discussions by the Planning Officers Society.



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