

# Protocol on Land Use Planning Matters and Development Control Committee

## 1. Introduction

- 1.1. Various reports into standards of conduct in public life and the subsequent ethical guidance introduced under Part III of the Local Government Act 2000 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 Councillors and officers is consistent and fair to all parties. It is also essential that all Councillors and officers involved in the planning process are clear on the standards which are expected of them.
- 1.2. The role of the Development Control Committee in determining applications is a formal administrative process and decisions taken by Councillors 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 Councillors 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 Councillors 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 Councillor or officer in any doubt as to their position should in the first instance contact the Monitoring Officer.
- 1.5. This protocol 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.
- 1.6. Failure to follow the protocol could also lead to a complaint to the Council's Standards Committee that a Councillor has brought the Council into disrepute or, in relation to an officer, disciplinary proceedings.

## **COUNCILLORS' CODE**

### **2. Training and Conflicts of Interest**

- 2.1. No Councillor may serve (as a member or substitute) on the Development Control Committee or on any committee or sub-committee involved in formulating local plan policy unless they have undertaken at least one course of training in planning principles in the last year. Such training to be undertaken annually thereafter.
- 2.2. Councillors considering membership of the Development Control Committee should carefully consider the potential for conflict of interest, having regard to the Code of Conduct and to this advice. Councillors who may be, or are closely associated with, local builders, estate agents, land owners or other people likely to be interested in the use or development of land will need to consider whether they can effectively perform their role in the light of such interests.

### **3. Pre-Application Discussions**

- 3.1. 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.
- 3.2. In order to allay such perceptions, pre-application discussions should take place within clear guidelines as follows:
  - 3.2.1. Pre-application discussions should generally be conducted at officer level. In the case of major planning applications, a Ward Councillor who is not a member of the Development Control Committee may be invited to participate. If the application site is within a single Councillor ward, and that ward Councillor sits on the Development Control Committee, and that Councillor intends to participate in debate concerning the application at the Development Control Committee, then that Councillor shall be entitled to appoint an alternative Councillor to take their place in such discussions but shall not themselves take part.
  - 3.2.2. 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.

### **4. Lobbying and Predetermination**

- 4.1. 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 Development Control Committee 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 Development Control 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 4.3 below. There is always a clear need for members of the Development Control Committee to declare at the appropriate meeting when lobbying or an attempt at lobbying has taken place on an item. Examples of persons or groups who may indulge in lobbying include developers and professional groups, unrepresented applicants, landowners, objectors and action groups.

- 4.2. Predetermination occurs when a decision maker prejudices an application before the matter is debated at the Development Control Committee. Predetermination may also give rise to a ground of challenge. In view of the decision making role of the Development Control 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.
- 4.3. In general terms, the following guidelines should be followed:
  - 4.3.1. Members of the Development Control 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.
  - 4.3.2. Councillors and officers may be asked to express an opinion on a planning proposal, but care should be taken in so doing. Members of the Development Control 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.
  - 4.3.3. If a site visit is deemed necessary then it is recommended that all Members of the Development Control Committee shall make every effort to attend that site visit. If they are unable to do so then they may view the site themselves only if they can do so from a public vantage point and without contact with the applicant.
  - 4.3.4. Members of the Development Control Committee must not organise support or opposition (internally or externally) to a planning application as this will make it difficult for a Councillor to argue convincingly when the decision is to be taken at Committee that they have carefully weighed the arguments and evidence presented.
  - 4.3.5. 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 Councillors should vote on a planning application.

- 4.3.6. Any members of the Development Control Committee individually receiving late written 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.
- 4.3.7. Members of the Development Control Committee should not generally accept personal invitations from applicants, developers and agents to attend meetings and presentations to promote major development proposals. If, notwithstanding this advice, Councillors 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 Councillor should not attend alone.
- 4.3.8. Members of the Development Control Committee should not allow themselves to be lobbied by any applicant or other persons before or during Committee meetings or during any breaks or adjournments in such meetings.

## **5. Declarations of Interest**

- 5.1. Councillors must always declare any interest they (or their spouse, partner or other relative or friend) have, of which they are aware, in relation to any matter under discussion and should withdraw from the meeting prior to the consideration of that item if the interest is a disclosable pecuniary interest or an interest which may be viewed as prejudicial.
- 5.2. Members of the Development Control Committee must not favour any particular person, company or group, nor put themselves in a position where they appear to do so.
- 5.3. 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 Councillor 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).

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

- 5.4. Councillors who have a prejudicial interest should refrain from discussing the matter with other Councillors or with officers. Further, a Councillor with a prejudicial interest in a matter, may not take part in any discussion concerning that matter, nor be present in the public gallery while any discussions take place.
- 5.5 Councillors with a prejudicial interest may make their views known in writing to the Planning Applications Manager. The nature of the prejudicial interest should be made known. Councillors may also appoint an agent or other person to speak on their behalf. Councillors should refer to the guidance issued by the Department for Communities and Local Government in such cases and seek the advice of the Council's Monitoring Officer.

## **6. Development Control Committee Procedures**

- 6.1. All planning matters considered by the Council or one of its committees will have a full written report from officers including a reasoned assessment of the issues under consideration and a recommendation from the relevant officers.
- 6.2. Councillors must read all reports before the Development Control Committee meeting and any issues that are likely to delay the decision making process should be raised with officers before the meeting, e.g. requirement for a site visit, inaccurate plans or information or any legal issues, so that they can be dealt with prior to the meeting.
- 6.3. Councillors should respect the role of officers to make their recommendation and not put pressure on individual officers to secure a particular recommendation in any particular case.
- 6.4. If an individual Councillor wishes their views to be considered and reported as part of the officers report, representations must be made in writing to the Planning Applications Manager .
- 6.5. Any new issues arising between the date when an agenda has been circulated and the date of the meeting will be put in a written report on the day of the meeting. Exceptionally, where this is not possible, any late information will be recorded in the Minutes of the meeting. Applicants and objectors attending Development Control Committee will not be permitted to hand out information at the meeting.
- 6.6. Applicants and objectors may address the Development Control Committee personally or through an agent prior to consideration of the application by Councillors. Where the County Council, or as Highway Authority, has raised objections on a planning matter, and has indicated that it wishes to address a Committee, its representative will be invited to the meeting and will be heard before a decision is taken.

- 6.7. Speakers, other than members of the Development Control Committee and ward councillors, will be allowed to speak for 3 minutes, objectors first, followed ward councillors then applicant/supporters. Where there is more than one objector or applicant they will be asked to appoint a spokesperson or be restricted to 3 minutes between them. At the discretion of the Chair, on very large/unusual applications arrangements will be made to ensure that objectors and applicants get equal opportunity to put their case. . Ward councillors may speak for up to 5 minutes.
- 6.8. Once a third party has put their case they may not speak again unless, at the discretion of the Chair, they are asked to clarify a matter of fact.
- 6.9. All participants at the Development Control Committee; Councillors, Officers, applicants and other third parties are entitled to be treated with respect. Planning applications are of immense importance to applicants and to those who are likely to be affected by them, feelings can often run high. Councillors should pay close attention to speakers at the Committee and no person should speak when another person is speaking.
- 6.10. A Councillor who wishes to propose a decision be taken contrary to officer advice should make clear his/her planning reasons for doing so at the time of making the proposal, with officer advice if necessary. Those reasons will form the basis for the Committee's decision and shall be noted in the minutes of the meeting. At the discretion of the Chair, if necessary, the Committee may take a short adjournment to allow officers to clarify the position and to assist in formulating the detailed reasons for refusal.
- 6.11. Where a proposal has been made and seconded to take a decision contrary to officer advice, the Chair will allow the Senior Planning Officer present at the meeting to respond before the vote is taken. If necessary, Councillors can debate the officer's advice further before taking the vote.
- 6.12. Except in exceptional circumstances and at the discretion of the Chair, non Development Control Committee members may only speak at the Committee on applications that are within their ward or directly affecting their ward. Those Councillors who do speak should confine themselves to planning matters. They may not participate in the debate.

## **7. Committee Site Inspections**

- 7.1. Site visits will normally be held on the day of the Development Control Committee before consideration of the Planning Applications Manager report.
- 7.2. The purpose of the site visit is to obtain additional information or clarification about a proposal and to view it in context, where it is difficult to assess the impact of the application from the submitted descriptions and drawings.

The reasons for the site visit will be recorded on the site visit itinerary issued to Committee members.

- 7.3. Items which are to be the subject of site visits will be decided by the Officers. If after receiving the committee agenda for the meeting when the provisional site visit itinerary has been drawn up any member of the Council would like the Committee to visit additional sites, they should inform the Planning Applications Manager by noon on the Friday preceding the meeting.
- 7.4. Because of the need to determine planning applications within the statutory eight-week period, there will be a strong presumption that planning matters will not be deferred to a future meeting to enable a site visit to take place.
- 7.5. Site visits are scheduled to allow for approximately 5 - 10 minutes per site unless the issues are complex, the site is very large or a particular vantage point is required as to need more time.
- 7.6. Members of the Committee will usually travel together by minibus but may meet at the site if they wish. Local ward Councillors who are not members of the Committee are invited to attend the site inspection but must make their own travel arrangements. Officers will attend the site visit to advise members.
- 7.7. Where possible the site will be inspected from a vantage point without the need to enter private property. If it is necessary to enter private property to view the site officers will make appropriate arrangements.
- 7.8. Site visits will not be used to discuss a planning matter with developers or objectors, who will not therefore be allowed to address the Councillors present. They will have an opportunity to do so at the Development Control Committee if they so choose.
- 7.9. The business of the visit is conducted in the following manner:
  - a) the officer will outline the application and the issues particularly those that have generated the site visit.
  - b) Councillors are invited to ask questions about the site and request any other information.
  - c) no other persons are permitted to address the Committee, although any persons, if present, are permitted to listen.
  - d) in the event of a question of fact being asked that an officer is unable to answer, the information may be obtained from an attendee at the meeting by an officer and reported back to the Development Control Committee.

## **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 once the agenda has been published.
- 8.2. 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 Councillor**

- 9.1. Councillors have access to lists of all planning applications received and determined on the intranet (also available on the internet) and are informed of all applications made in their wards. Any Councillor may request in writing that any application should be referred to the Committee for determination if there are sound planning reasons for doing so which must be specified in writing to the Planning Applications Manager within 3 weeks of an application being received. In the event of a dispute as to whether sound planning reasons have been given by the Councillor seeking to refer an application to the Committee for determination, the Planning Applications Manager shall discuss the matter with the Committee Chair and Vice-Chair with a view to agreement being reached on whether the application should be referred to Committee. In the absence of agreement, the majority view of the Planning Applications Manager, Chair and Vice-Chair shall prevail.
- 9.2. If a Councillor (other than the Committee Chair or Vice-Chair) who is not the local ward Councillor is asked to become involved in a planning matter, he/she should first endeavour to inform the local ward Councillor(s) before attending any meeting or site visit, or taking any other action.
- 9.3. In determining planning applications at Committee, Councillors must not base their decision purely on local issues. All decisions should be based only on relevant material planning considerations, local and national planning policies.

## **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 Councillors, 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 ensure that officer's recommendations are not influenced by improper motives or seen to be so influenced.
  - 10.8.2. Officers should always comply with the Council's Employee Code of Conduct. Officers that have an interest (i.e. similar to those which apply to Councillors under the Council's Code of Conduct) should immediately inform the Chief Executive in writing. A register has been set up for recording such Officer's interests.
  - 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 Executive Director.

## **11. Development Proposals Submitted by Councillors and Officers**

- 11.1. Councillors and officers ought not to act as agents (formally or informally) for people pursuing a planning matter with the Council. Should a Councillor or officer submit their own proposals to the Council they should declare a Disclosable Pecuniary Interest. Officers should register their interest with the Monitoring Officer
- 11.2. After consultation with the Council's Monitoring Officer an Officer with a Disclosable Pecuniary Interest may speak at Development Control Committee as a member of the public, i.e. notice must be given of the intention to speak, time limited to 3 minutes and sharing of time if more than one speaker. The declaration of interest should be given before speaking.

Once representations have been made and any questions answered then the Officer must immediately leave the room.

- 11.3. Proposals which do involve an officer or Councillor will always be determined by the Committee and not dealt with under delegated powers.
- 11.4. 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 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 Development Control Committee should decline any gifts or other hospitality offered by people with an interest in a planning proposal. In the event of a Councillor who does not sit on the Development Control Committee being offered a gift or other hospitality, this must be declared promptly as an attempt at lobbying, in accordance with Rule 4 of this Protocol.
- 12.3. Planning Officers and members of the Development Control 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.

In the event of a Planning Officer or Councillor having significant social contact with a developer or agent, he/she should declare an interest which may be viewed as prejudicial 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.

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