

## **Planning and Development Control**

### **A Protocol for Councillors**

#### **Introduction**

1. Advice to Councillors and officers is provided by the Local Government Association (LGA) in their guidance document 'Probity in Planning – Update 2002'. The LGA recommends that local authorities prepare local protocols based on their guidance adapted to local circumstances. This protocol has been produced for Members in accordance with that recommendation and is based partly on the LGA guidance as well as drawing on advice from the Royal Town Planning Institute.
2. The protocol supports and supplements the guidance issued by the Local Government Association referred to in 1 above. Members should have regard to that guidance and any further guidance that may update or replace that guidance.
3. The Council's Constitution includes a Model Code of Conduct, which Members must comply with.
4. Part 2 of the Model Code of Conduct gives advice on the declaration of Member Interests. This is particularly important in relation to the Planning Control Committee, where failure to declare an interest could lead to legal challenges to the Committee's decisions. The Director of Legal and Democratic Services' representative at the Committee can give advice to individual Members where they are in any doubt. However, it remains a Member's responsibility to declare an interest and ensure it is recorded in the minutes.
5. Probity is one of the subjects, which feature in an annual Planning Control Committee Training Day. The view of the Council and its Standards Committee is that attendance on that training should be accepted as compulsory for Planning Control Committee Members. Members should ensure they receive that training before participating in decisions of the Planning Control Committee.

#### **6. Members' and Officers' Roles**

The planning system involves taking decisions about the use and development of land in the wider public interest and in doing so Members have to balance individual interests, for example those of the applicant or of a neighbour, against the broader public interest. The credibility of the Planning Control Committee and of the individual members of the committee in their approach or perceived approach to determining applications is vital to maintaining and promoting public confidence in the planning process. It is the advice of the Local

Government Association that, in making decisions on planning matters, Members should:

- act fairly and openly
- approach each application with an open mind
- carefully weigh up all relevant issues
- determine each application on its own merits
- avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another
- ensure that there are clear and substantial reasons for their decisions and that these reasons are clearly stated:

It is the Officer's role to:

- provide impartial and professional advice
- make sure all the information necessary for the decision to be made is given
- set applications and enforcement issues against broader Development Plan, Local Development Framework and other material considerations
- give a clear recommendation
- give reasons for the recommendation
- implement the decisions of the Committee

## **7. Lobbying**

It is quite common for applicants or other interested parties to wish to discuss a proposed development with elected Members before a planning application is determined.

This can help Members' understanding of the issues and concerns associated with an application. However, Members are under an obligation to determine matters on their merits. That means that they must not make up their minds before receiving and reading any officer's report or before hearing any debate on the matter, out of which new information may arise. It therefore follows that if a Member states his/her support for or opposition to a proposal before the matter is formally considered at the relevant meeting, it will inevitably raise questions in terms of credibility as to whether that member can approach the issue with an open mind. To avoid compromising their position before they have received all the relevant information, Members should:

- avoid as far as possible meeting an applicant or potential applicant alone
- avoid making it known in advance whether they support or oppose the proposal

- restrict their response to giving procedural advice
- not pressure officers to make a particular recommendation in their report
- direct lobbyists or objectors to planning officers, who will include reference to their opinions where relevant in their report
- advise the Chair of the Planning Control Committee or officers of the existence of any lobbying interests

Members must act in the public interest and not at the behest of any individual or interest. If a Member feels that he/she no longer retains an open mind on the matter, or that his/her impartiality has been compromised so that they should not take part in the debate, he/she should make a declaration to that effect, should not take part in the debate and should leave the meeting during discussion of the matter.

If a Member feels that the views of constituents should be reported to the meeting of the Committee they should refer them to another Councillor who is not a Member of the Committee to make them.

Members should pass any information received relating to an application to the relevant planning officer so that it can be considered and checked and, if relevant, included in the officer's report to the Committee.

## **8. Discussions with Potential Applicants**

Pre-application meetings with potential applicants are encouraged, to encourage beneficial development and to resolve matters, which might otherwise lead to the refusal of planning permission. But to avoid such meetings being misunderstood they will normally be at officer level and:

- where meetings are to involve elected Members they should be arranged by and attended by officers, and should include the Chair of the Planning Control Committee or his/her representative
- potentially contentious meetings should be attended by at least two officers
- a note of the discussion should be taken and placed on file and made available for public inspection at the appropriate time
- it should always be made clear at the outset of such meetings that any views expressed are personal and provisional views and no commitments can be made which would bind or otherwise compromise the Planning Control Committee or any Member of the Planning Control Committee. Any advice given should be consistent and based upon the existing Local Plan and any other material considerations.

## **9. Group Pressure**

Members cannot accept an instruction from anyone to determine an

application in a particular manner, but must determine the issue on its merits. Accordingly while they may accord appropriate weight to the views of other Members, whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. As a result, it is inappropriate for any political group to instruct its Members to vote in a particular manner on an application or to apply, or threaten to apply, any sanction to any Member who voted contrary to the Group's collective view.

#### **10. Decisions Contrary to Officer Recommendation**

From time to time Members of the Planning Control Committee will disagree with the professional advice given by the officers. Development Control is not an absolute science; whilst Members should only have regard to material planning considerations, there can be genuine disagreement about the weight to attach to them and the implications of a particular proposal.

In cases where the Planning Control Committee decides to depart from the officer recommendation, the Committee must give reasons, and those reasons must be recorded in the minutes of the meeting. Officers should be given an opportunity to explain the implications of such a decision.

Failure to give reasonable, justifiable and adequate reasons may, in the case of a successful appeal, result in costs being awarded against the authority. If an appeal is made in such circumstances the Committee is expected to nominate a Member who voted to refuse the application to appear as a witness in any subsequent appeal, with the support of officers.

#### **11. Site Visits**

Site visits can be useful to identify features of a proposal, which may be difficult to convey in a written report, but site visits may delay the decision on an application.

In order to avoid such delays procedures are in place to identify applications where site visits may be desirable and for such to be carried out prior to applications being reported to the Planning Control Committee.

When a Member feels that a site visit will be essential, he/she can either make a request to officers in advance or in exceptional circumstances request the Planning Control Committee to defer the determination of the matter until a site visit has been held.

Where Planning Control Committee is requested to defer a

determination to enable a site visit to take place sound reasons should be given for the site visit and they should be recorded in the minutes.

Procedures for the conduct of site visits may be set by Members.  
[See the attached appendix for the current Site Visit Protocols] Where such procedures exist Members must take care to follow them.

Site visits are only likely to be necessary where:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers and supplied at the meeting; or
- there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or
- the proposal is particularly contentious.

## **12. Gifts and Hospitality**

Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process. offence. Members should have particular regard to the provisions of the Council's Code of Conduct and Protocol on Gifts and Hospitality. . In particular, they must within 28 days report to the Monitoring Officer any offer of gifts or hospitality of over £100 for recording in the register of gifts, and they should avoid any behaviour which might be taken as indicating that they are open to such offers. Where Members have received or been offered hospitality by any parties involved in an application, recently or in the past and whether by the applicant, objector or supporter, they must give serious consideration to whether they should participate in making the decision. Acceptance of gifts or hospitality by members or officers where linked to the improper use of their office can be a very serious criminal offence. Members should endeavour to avoid such inferences arising. Advice should be sought from the Council's Monitoring Officer.

## **13. Planning Applications by Members of the Council**

The impartiality of the planning process requires particular care when dealing with an application by anyone who might ordinarily be involved in the planning process. Accordingly, whenever any Member of the Council submits an application to the Authority for himself/herself, or on behalf of any other person, he/she must:

- inform both the Director of Planning – Property Services and the Council's Monitoring Officer
- take no part in processing or determining the application
- shall not attempt to lobby any Members of the Planning Control Committee and must avoid discussing the application with such

## Members

This applies equally to Members objecting to an application in their personal capacity.

The Director of Planning & Property Services will ensure that all such applications are determined at the Committee meeting and not under delegated powers.

In such cases, where Members of the Council make or are involved in applications the issue of pecuniary interests and the issue of actual or perceived bias is likely to arise for the Members of the Committee. Whilst the tests in these circumstances are no different to applications that do not involve Members, the working relationship of Members may give rise to public perceptions of impropriety. Members are advised to have particular regard to these issues before deciding whether to participate in the determination of such applications.

### 14. **Planning Applications by the Council**

The Council itself requires planning permission to carry out or authorise development on land it owns. These applications should be treated in the same way as those from private applicants.

### 15. **Applicant and Public Representations at the Planning Control Committee**

The Planning Control Committee has approved procedures to ensure that, where they receive representations from, or on behalf of, the applicant or from members of the public on a particular application, there is an opportunity for advocates both for and against the proposal to be heard in a balanced manner.

### 16. **Interests**

Members of the Council are prevented from taking part in debating or voting on applications in which they have a pecuniary interest. They will however be allowed to address committee, but they must withdraw from the meeting before the application is debated or voted upon. Guidance is available from the Monitoring Officer, the Planning Control Committee Solicitor.

### 17. **Complaints relating to Breaches in Probity**

Details of how to refer a complaint can be found on the Council's website.

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## **Appendix**

### **Protocol for Planning Committee Site Visits**

#### **1.0 Background**

- 1.1 This protocol is intended to guide members of the Planning Control Committee when considering planning applications in deciding on whether site visits are appropriate and the procedure for arranging and carrying out site visits.
- 1.2 It is also intended to inform other stakeholders with an interest in planning applications, e.g. applicants, objectors and agents, about the purpose and procedures at site visits.
- 1.3 Site visits by the Committee are part of the formal committee process and therefore should be dealt with in a consistent and organised manner. Administrative and procedural arrangements on site should be understood by all taking part so that the process is transparent and fair.

#### **2.0 The Purpose of a Site Visit**

- 2.1 Site visits help in enabling Members of Planning Committee to understand more fully:
  - the details of a development proposal in the context of the application site,
  - the surrounding land and buildings,
  - issues raised by interested parties.
- 2.2 Site visits can be useful to identify features of a proposal, which may be difficult to convey in a written report, however they may delay the decision on an application.
- 2.3 In order to help avoid such delays procedures are in place to identify applications where site visits may be desirable. This enables Committee to determine whether site visits are likely to be necessary and for them to be carried out prior to applications being reported to the Planning Control Committee.
- 2.4 When a member of the Committee feels that a site visit will be essential, he/she can either make a request to officers in advance or in exceptional circumstances request the Planning Control Committee to defer the determination of the matter until a site visit has been held. Planning Control Committee is at liberty to consider requests from members of the public or ward members but in doing so should follow this guidance.
- 2.5 Where Planning Control Committee is requested to defer a determination to enable a site visit to take place sound reasons should be given for the site visit and they should be recorded in the minutes.

- 2.6 Site visits that may lead to deferral of an application should only be held where:
- the impact of the development is particularly difficult to visualise, or
  - there is good reason why the comments of the applicant or objectors cannot be adequately expressed in writing, or
  - the proposal is particularly contentious, or
  - there are other justifiable reasons for requiring one.
- 2.7 Site visits should not be undertaken to defer difficult decisions on controversial applications, or when applicants, objectors or constituents request them without good planning reasons.
- 2.8 Site visits are part of the meeting of Planning Control Committee. Councillors intending to declare a personal interest should make this known to the Chair and Planning Officer on site. If the interest is not prejudicial the councillor may attend the site visit. They should ensure that their declaration is duly recorded in the minutes of the meeting when the matter comes before committee for determination. Councillors intending to declare a prejudicial interest and withdraw from the meeting on the matter, should not attend the site visit.
- 2.9 Planning Committee members who fail to attend the site visit will need to consider whether they have sufficient knowledge of the site and the issues arising from the site visit to enable them to take part in determining the application.
- 2.10 The report to committee is published 7 days in advance of the Committee meeting with a view that should members of the committee wish they can undertake individual site visits to view the site from public land.

### **3.0 Arranging Site Visits**

- 3.1 Where the Planning Control Committee considers that a site visit is necessary Constitutional Services will make the necessary arrangements.
- 3.2 The following will be invited to the site visit:
- All Members of the Planning Control Committee
  - Ward Members, however if they wish to speak this will be arranged to take place at the committee meeting.
  - If appropriate, members of the Conservation Area Advisory Committee
  - The agent (or, in the absence of an agent, the applicant) will be informed in order to secure permission to access the site and make arrangements to access the site.
- 3.2 Objectors/supporters would not normally be invited to attend a site visit. Any request for objectors/supporters to attend will be considered by and will be at the discretion of the Chair.
- 3.3 A copy of the committee report, where available, plans and where appropriate the Site Visit Protocol will be sent to all those notified of the visit.



- 3.4 While officers will attempt to arrange the visit in advance with relevant parties, there is no right to enter on private land without permission of the owner. Where appropriate officers will obtain prior permission from land owner or his agent for those invited to attend the site visit to enter the land. If permission is not given for members and officers to enter, the site will have to be viewed from the public highway/areas.

#### **4.0 Procedure at Site Visits**

- 4.1 The Chair of Planning Control Committee will oversee the conduct of site visits. They will start promptly at the time notified to members and interested persons. The Planning Officer will note the names of all members, officers and invitees present. The Planning Officer will ensure, and if possible reconfirm with the owner or his agent, that all those entering the site as part of the inspection have the owner's permission to do so.
- 4.2 Councillors should either travel to the site at the same time as, or with, the planning officer attending the visit or meet the officer on site. If present at the site before the visit begins particular care should be taken to ensure that they maintain their objectivity. Hospitality or lifts should not be accepted from an applicant or objector as this could be seen to show favour.
- 4.3 Councillors and officers, and other people attending, should ensure that mobile phones are turned off or are on silent during the site visit.
- 4.4 At the request of the Chair, the Planning Officer will describe the proposal to councillors and will display plans or drawings of the proposal. If one is available it is expected that councillors will already be familiar with the planning officer's report. The Planning Officer will indicate matters of fact in relation to the proposal and surrounding land which Councillors should take account of.
- 4.5 Members of the Planning Control Committee may ask the Planning Officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of parking spaces. Member questions should be addressed to the planning officer through the Chair. **At no time during the site visit should councillors debate or comment on the planning merits or otherwise of a proposal. Councillors should not discuss the merits of the application as the proper time for this is at the subsequent committee meeting. To do so might imply that the Councillor's mind is already made up. Even comments on the scenery or locality could be perceived as a comment on the appropriateness of the proposal.**
- 4.6 **The public right to address Planning Control Committee does not arise until the item is reached on the committee agenda. At no time during the site visit will the applicant, their agent, any objector or any other member of the public be allowed to address councillors. The**

**site visit is not for further representations to be made, however occasionally it may be appropriate for interested parties at the site visit to be asked, through the Chair, to point out important or relevant site features however they should not be encouraged to express opinions.**

- 4.7 Presentations from interested parties, on no account, should be made. If one is commenced the Chair should halt the proceedings to enable the site visit to resume unencumbered.
- 4.8 In order to assist in ensuring that Councillors receive the same information, they should keep together in one group with the chair and the planning officer and not break away into small groups.
- 4.9 At the end of the site visit the councillors should leave the site promptly. If necessary they will drive or be transported to the next site visit where the same procedures as above will apply.
- 4.10 The Planning Officer's record of Councillors' attendance at the site visit is given to the committee clerk for minute purposes.
- 4.11 When the application is reported to Committee for consideration and debate the Planning Officer will briefly describe during the presentation of the item, the purpose of the site visit and the main aspects viewed

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