



DERBY CITY COUNCIL

STANDARDS COMMITTEE

15 APRIL 2005

Report of the Director of Corporate Services

ITEM 4

Protocols on Planning

RECOMMENDATION

- 1.1 Committee is asked to recommend to Council that they adopt the Planning Protocol set out in Appendix 2.

SUPPORTING INFORMATION

- 2.1 The Committee at its meeting of 14 October 2004 determined that it would be desirable to adopt a formal Planning Protocol and requested that a report be brought to the Committee with a suitable protocol for the Council to adopt.
- 2.2 There is no statutory requirement to produce or adopt such protocols, but it is good practice to do so. The Committee's suggestion reflects guidance issued by the Local Government Association (LGA) in their guide to Probity In Planning. This advises local authorities to prepare such protocols based on the LGA guidance and adapted to suit local circumstances.
- 2.3 Attached, as Appendix 2 is the proposed Planning Protocol. The document currently forms part of the guidance issued to Members of the Planning Control Committee as part of the Development Control Manual. Whilst clearly a substantive issue that Members need to have regard to it does not have the weight that a formally adopted protocol would have.
- 2.4 The suggested protocol was drafted with the intention it would be ratified as the formal Planning Protocol for the Council. It is partly based on the LGA guidance and also draws on advice from the Royal Town Planning Institute.

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List of appendices:	None
	Appendix 1 – Implications
	Appendix 2 - Planning Protocol

IMPLICATIONS

Financial

- 1.1 None directly arising from this report.

Legal

- 2.1 As outlined in the report.

Personnel

- 3.1 None directly arising from this report.

Equalities impact

- 4.1 None directly arising from this report.

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 Corporate 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. 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, he/she cannot claim to retain an open mind on the issue and to be prepared to determine it on its merits. 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 Development Plan or Local Development Framework and any 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.

Where such procedures exist Members must be 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, and acceptance of gifts or hospitality by Members or officers can be a very serious criminal 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 immediately report to the Monitoring Officer any offer of gifts or hospitality, 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. 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 Assistant Director – Development 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 Assistant Director – Development 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 prejudicial 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 speaking on applications in which they have a personal prejudicial interest, whether as applicant, supporter or objector. Guidance is available from the Monitoring Officer, the Planning Control Committee Solicitor or the Standards Board for England.

17. Complaints relating to Breaches in Probity

Procedures exist for referring complaints about alleged breaches of the Member's Code of Conduct to the Standards Board for England. For further information visit www.standardsboard.co.uk.