

## **E5 - PLANNING PROTOCOL**

### **GUIDELINES FOR COUNCILLORS AND OFFICERS**

*'Planning is a sensitive area of local authority work because of the considerable sums of money which can hinge on individual planning decisions and the strong emotions often felt by those supporting or opposing development proposals. It is particularly important, therefore, that the planning process is conducted in a fair, open and even-handed way.'* - Government response to Nolan.

Planning decisions affect people and their property, and can be contentious. The issues involved are rarely straightforward. There are nearly always two sides to every case, and many shades of opinion in between.

The Council, as the local planning authority, should stand above the rhetoric and heated comments, and take a measured, balanced view based on all the relevant information and on sound evidence.

This Planning Protocol applies to all Councillors and Officers and to all planning matters, including the preparation of the Development Plan, the consideration and determination of development control applications, (including those for planning permission, listed building consent, conservation area consent and advertisement consent), enforcement matters and the protection of trees and hedgerows.

The Protocol is to be read alongside the Councillors' and Officers' Codes of Conduct.

In this Protocol, the term 'Planning Committee' is used to denote the Committee of the Council which is responsible for dealing with all development control and related matters.

## **1. Essential Principles**

1.1 The Council is required to act in the public interest. The word ‘public’ in this context includes the applicant, consultees, those affected by the proposals, local interest groups, the larger community of the whole district and regional/national priorities.

1.2 In determining planning matters, there are two principal parties - the applicant and the Council - everyone else is a “third party”.

1.3 Third parties’ views are very important and must be considered carefully, but they are only one of the things to be considered. Local opposition or support for a proposal is not in itself a ground for refusing or granting permission, unless it is founded on valid planning reasons that can be substantiated with evidence.

1.4 Applicants pay a fee, in most cases, to help pay for the cost of processing their application. They should be treated promptly and with courtesy, fairness and openness.

1.5 In law, the Council is required to make decisions on planning applications in accordance with the Development Plan, where it applies, unless “other material considerations” indicate otherwise. The Development Plan is the County Structure Plan and the Council’s own Local Plan, read together. If decisions are made contrary to the Development Plan then the reasons for this must be recorded in the Minutes.

1.6 The wider aims and priorities of the Council are a material consideration in making planning decisions. They carry considerable weight when supported by the Development Plan.

1.7 In cases where the Council’s aims and priorities appear to be in conflict with the Development Plan, Officers will advise what weight is to be afforded

to each. The Committee will then decide (having heard the debate and listening to the public speakers) if it agrees with Officer advice.

1.8 The National Planning Policy Framework is also an important material consideration, and must always be taken into account in both policy formulation and decision-making on applications.

1.9 Decisions on land allocations and planning and related applications must not be taken on party-political lines.

1.10 Where the Council itself is the applicant, or has an interest in an application, the decision should be made impartially, as with any other application. The Council's interest is to be disregarded in the decision-making process.

1.11 A Councillor who has been appointed to the Board of an outside organisation by the Council may speak in respect of an application made by that organisation, without been accused of being bias, provided they are genuinely willing to listen to the debate of the Planning Committee and weigh the considerations material to the Committee's decision.

1.12 Where information has been provided to Councillors or Officers on a confidential basis, it shall not be disclosed to third parties.

1.13 All Councillors will undergo training in planning procedures and practice. This will be offered annually (or as often as is required) to all Councillors. All Councillors on the Planning Committee MUST undergo training prior to serving on that Committee as well as refresher training which ensure Members are kept up-to-date on changes in planning. Similarly, in the event of an application being referred to the Council for determination, all Councillors who take part in the determination meeting must have undergone relevant training.

1.14 Information in respect of gifts and hospitality is included within the Councillors' and Officers' Codes of Conduct. All offers of gifts and hospitality should be recorded, whether accepted or not accepted.

1.15 A guiding principle is that if there is any question about a matter of probity or propriety, advice should be sought from the Legal or Democratic Services sections. If in doubt, caution should be exercised.

## **2. The Role of Councillors Who Make Decisions on Planning Matters**

2.1 The role of Councillors is to have careful regard to all relevant information before them and to come to a decision. Particular regard should be given to Development Plan policies when planning applications are considered.

2.2 Whilst Councillors have a special duty to their constituents, including those who did not vote for them, their over-riding duty is to the whole community. They should vote in what they perceive to be in the interests of the whole District.

2.3 Even if Councillors feel strongly about a proposal, they should not make up their minds how they intend to vote in advance of the decision-making Meeting, because all the information will not normally be available until then.

2.4 The Officer report and last-minute papers should be read and plans/photographs seen before decisions are made. Councillors will also have an opportunity to put questions to Officers and hear the views of their fellow Councillors, the Applicants and other third parties during the course of the debate.

2.5 During Committee Meetings, everything said may be scrutinised by Applicants, objectors, legal advisers and the Press, so Councillors and Officers should be circumspect. Those Councillors who serve on the Planning Committee, or their Substitutes, should ensure they do not speak to members of the public, or pass or accept notes from them, during the course of a

Meeting. If you leave the room during the Meeting, avoid speaking to any Applicants or objectors/supporters who may be waiting outside the room. If a Councillor leaves the room during debate or whilst an application is before the Committee they will not take part in the debate or vote on that application.

2.6 Councillors on the Planning Committee who are also members of Town or Parish Councils may speak and vote at Town or Parish and District levels if they are genuinely willing listen to the later debate and weigh the considerations material to the later decision.

2.7 Councillors on the Planning Committee who are also County Councillors may speak and vote at District and County levels if they are genuinely willing to listen to the later debate and weigh the considerations material to the later decision.

2.8 In summary, Members of the determining body (Planning Committee/Council) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application.

2.9 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave a decision susceptible to challenge by Judicial Review.

2.10 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the meeting before deciding on how to vote (predisposition). The latter is alright, the former is not and may result in a Court quashing such planning decisions.

2.11 Section 25 of the Localism Act 2011 also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

2.12 This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased.

2.13 If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter. This would apply to any member of the Planning Committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward). If the Council rules allow substitutes to the meeting, this could be an appropriate option.

### **3. The Role of Ward Members**

3.1 Councillors who sit on the Planning Committee may speak **and** vote on applications within their own Wards. Other Members may speak on applications within their Wards when invited by the Chairman to do so. There is a convention that such an invitation will be offered.

3.2 The role of Ward Members who do not serve on the Planning Committee is different from that of those Members making the decisions in that Ward. Members can engage with their constituents and make representations to the Committee on their behalf.

3.3 A Ward Member does not have to follow the views of his/her constituents or, for that matter, those of the relevant Town or Parish Council. It is open to a Ward Member to proffer his or her own views as an alternative or in addition to those of his/her constituents. The Ward Member has responsibility to inform his or her Ward how they have spoken

#### **4. Lobbying of, and by, Members**

4.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their Ward Member or to a member of the Planning Committee.

4.2 As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

4.3 Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

4.4 As noted earlier in this Protocol, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the Planning Committee in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments.

4.5 In such situations, they could restrict themselves to giving advice about the process and what can and can't be taken into account.

4.6 Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at committee.

4.7 If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or Ward Member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence.

4.8 It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.

## **5. The Role of Officers**

5.1 The role of Officers is to gather all the information about an application or proposal, and to provide professional guidance to Councillors. Members should not put pressure on Officers to put forward a particular recommendation nor look to Officers to find a reason for refusal/acceptance. Planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence.

5.2 There will be cases when Members consider making a Contrary Decision to the Officer's recommendation, placing more or less weight on material planning considerations. In this event, Members must follow the Planning Committee Guidance Note on Decisions Contrary to an Officer Recommendation.

5.3 Officers' written reports should, wherever possible, contain a conclusion and a clear recommendation, unless this is not possible because of information which is awaited but expected to be received before the date of the meeting. In such cases an oral recommendation may be made, which should be recorded in the minutes.



5.4 Officers' oral presentations should be confined to a brief summary of the written report together with any updating, which should be carefully minuted. Councillors are not bound to follow Officers' recommendations, but if a contrary decision is made, it should be for clear cut planning reasons which need to be carefully minuted.

5.5 Unless the matter is considered to be urgent, all reports to the Committee will be in writing. Oral updates may be given at the Meeting in respect of any late information or representations received.

5.6 Officers are employed by the Council, not by individual Councillors, so instructions *may only be given to them* by Councillors who are not Cabinet Members through a Council or Committee decision.

5.7 In their management of developments, Officers are expected to give pre-application guidance to prospective Applicants and will also support and facilitate community engagement with the planning process, but must ensure that they clarify that their role is also to give advice and recommendations to Councillors, who will make the final decisions on many applications.

5.8 Officers may, on occasions, have confidential pre-application discussions with prospective developers which include commercially sensitive information. Any notes of such Meetings which Officers may make are confidential and must not be disclosed to third parties. All Councillors can accompany Officers at such Meetings and Councillors should not disclose any confidential matters discussed at such Meetings to any third parties. All Councillors have access to any such confidential advice and will be bound by the same rules of confidentiality.

5.9 It must be made clear that any advice given by Officers to Applicants, Agents or third parties is provisional and not binding on the Council, and that a final recommendation will be made in the light of all relevant considerations and information. File notes should be kept of all advice given and, if possible, it should be confirmed in writing.

## **6. Obtaining Information**

6.1 If Councillors wish to examine a file or see an Officer prior to a Meeting, it is courteous and helpful to make an appointment. A wasted journey may be saved if the Officer is out or already in a Meeting.

6.2 If there are technical or detailed questions that need to be asked at a Committee Meeting, whenever possible, advance warning should be given to the Case Officer. This will ensure that a prompt and full reply is provided, and the progress of the Meeting is not delayed.

6.3 If Councillors receive correspondence direct from Applicants or objectors/supporters, it is important that a copy is sent to the Case Officer as soon as possible so that its contents can be reported openly to all Councillors and the public.

6.4 Councillors should try to arrive at Committee Meetings early in order to read the, sometimes lengthy, late representations. However, the Chairman of the Planning Committee will ensure that, if necessary, time will be made available within the Meeting itself for Members to read late representations.

6.5 Officers are bound to put before the Committee any representations or information received, even if it is at the last minute. If there is too much late information to absorb properly, it is appropriate to suggest that there is a short adjournment or the item may need to be deferred.

## **7. Planning Enforcement**

7.1 Ward Councillors can help the work of the Council by acting as “eyes and ears” on the ground. If they believe there has been a breach of planning control, the Enforcement Officers should be informed promptly, and given as much information as possible. However, Councillors should not involve themselves in any subsequent investigation and should not seek to confront or negotiate with alleged “offenders”.

7.2 Please remember that a breach of planning control is not a criminal offence. Whether or not enforcement action should be taken is a matter of judgement and expediency.

## **8. Site Inspection Briefings**

8.1 Site Inspection Briefings (SIBs) can cause delay and incur additional costs for Applicants and the Council. They should only be used when the reason for doing so is clear and the expected benefit is substantial. When deciding to carry out an SIB, the planning reason for the visit should be clearly recorded in the minutes and the Applicant(s) informed. SIBs are for fact-finding and clarification of issues that cannot readily be explained at a Committee Meeting.

8.2 SIBs are not public meetings, they are private briefings for Councillors. No decisions are made at SIBs and discussions do not take place on the merits or otherwise of a proposal. It is important that those who were present at SIBs attend the following Committee as they will be invited to report back with their observations. However they should not comment on the merits of the case at that stage in the Meeting.

8.3 SIBs should be carried out in accordance with the adopted Protocol. Whilst they tend to be informal, it is important that they are conducted with discretion, as Councillors and Officers are representing the Council, and their actions may be observed by the public.

8.4 When at SIBs, Councillors may come into contact with Applicants or objector/supporters, but should not engage them in conversation about the proposals.

## **9. Declaring Interests**

9.1 Responsibility for declaring interests lies with the individual Councillor or Officer. Information about the declaration of interests is given in the

Councillors' and Officers' Codes of Conduct. The key issue is whether a member of the public would reasonably think that they might be influenced by their interest.

9.2 If you, or your spouse/partner, or any close family member or close business associate makes a planning or related application, the fact that you are a Councillor or Officer should be declared in a covering letter.

9.3 Applications submitted by Councillors or Officers cannot be determined by Officers under delegated powers, but must be considered and determined by the Committee. Such applications must be considered with impartiality.

9.4 Councillors and Officers may make written representations about applications as private individuals but, if they do so, they should declare in their letter that they are Councillors or Officers.

9.5 If in doubt about the declaration of an interest, the Legal or Democratic Services Sections should be asked for advice. Do not ask another person to represent your views on your behalf.

9.6 All the points about the declaration of interests in relation to planning and related applications also apply to representations in respect of the Development Plan proposals and policies.

## **IN SUMMARY**

### **DO:**

- *look at the whole picture starting with the Development Plan*
- *think not only of your constituents but of the whole District*
- *if asked by the public, advise about procedures but nothing else*
- *remember at all times that Meetings are held in public.*

**DON'T**

- *make your mind up in advance of a Planning Committee Meeting - or give the impression you've made it up.*

28<sup>th</sup> July 2017

(END)