

Appendix 18 – Planning Procedures – Code of Best Practice

1. Introduction

- 1.1 This is a Code of Best Practice for dealing with planning applications and related matters. It takes account of the recommendations of the Third Report of the Nolan Committee and the guidance produced by the Local Government Association as well as drawing on the County Council's own experience in these areas including the views of the Standards and Planning Regulatory Committees.
- 1.2 The aim of the Code is to give clear guidance to County Council Members and officers on how they deal with planning matters. In doing so, it should also seek to ensure that the public have confidence that the decision making of the County Council is open and fair.
- 1.3 The majority (90%) of planning matters are normally dealt with by officers under delegated powers. Only the most controversial and contentious matters are determined through the County Council's Planning Regulatory Committee. This Code applies whoever takes the decision.
- 1.4 This Code applies to appointed members of the Planning Regulatory Committee and substitutes drawn from the nominated panel. References in the Code to Committee members therefore include substitutes and even the full Council if they take the planning decision.
- 1.5 The Code applies to the full range of planning matters determined by the County Council.
- 1.6 Failure to follow recommendations contained in this code could be considered in investigations into allegations of maladministration and might also indicate a breach of the Members Code of Conduct in Appendix 17 of the Constitution.

2. Declaration of interests

- 2.1 The provisions of the Members Code of Conduct relating to interests are in Appendix 17 of the Constitution.
- 2.2 There will be a standing item on the agenda of all committees to facilitate the declarations of interest.
- 2.3 To assist Councillors in this difficult area training will be provided in accordance with this code.

3. Pre-determination

- 3.1 It is a well understood principle that judicial and quasi-judicial decisions must not only be taken in a fair and unbiased way but must be seen to be so. Although planning committees are not quasi-judicial but administrative, the tendency of the courts has

been to apply similar principles to planning committees.

- 32 Where applications are considered for County Council development or development on County Council Land those members of the Committee who have participated in the decision to apply for permission will declare that fact and not take part in the determination.
- 33 Where an external body, including a school, makes, initiates or is closely involved with an application for planning permission and members of the Committee (or their family members) serve on that body then the Committee member must declare an interest and not take part in the determination.
- 34 Where a member of the Committee serves on a Parish, Town or District Council which has commented on an application before the Committee, provided the member has not come to a final view on all the relevant matters before the Committee then they will declare that fact but may take part in the determination. If they have participated in a meeting on the application at Parish, Town or District level they should have it minuted at that meeting that they have not come to a final conclusion on the application.
- 35 Where however in the situation referred to in paragraph 3.4 such members have already decided in their own minds how the application should be decided then they must declare an interest and not take part in the determination.

4. Development Proposals Submitted by Councillors and Officers

- 4.1 The County Council fully recognises that proposals by serving Councillors and officers and their close friends and relations can easily give rise to suspicion of impropriety. In order to ensure that they are handled in a way that gives no grounds for accusations of favouritism:
 - a) the Director of Governance will be informed of such proposals;
 - b) such proposals will be reported to the Planning Regulatory Committee for decision and not dealt with by officers under delegated powers. As part of the report the Director of Governance will confirm whether the proposal has been processed normally;
 - c) serving Councillors who act as agents for people pursuing a planning matter or who submit planning proposals in their own right must play no part in the decision-making process for that proposal; and
 - d) persons who are employed as planning agents should not serve as members of the Committee.
- 4.2 An application on the agenda relating to development by a member is likely to be a disclosable pecuniary interest or other interest and the Member needs to consider whether they should declare the interest and withdraw from the room during consideration of the matter.

5. County Council Development

Proposals for the County Council's own development and that of wholly owned companies will be treated in the same way as those of a private developer particularly in relation to officers' advice, which must be impartial.

6. Lobbying of and by Councillors

6.1 The County Council recognise that lobbying is a normal and perfectly proper part of the political process. The third report of the Nolan Committee noted that it was essential for local concerns to be properly ventilated and the best way to do this was through the local elected representative. However, lobbying can lead to the impartiality and integrity of a Councillor being called into question and in a number of cases lobbying has caused considerable public mistrust of Councils. As a result:

- a) when being lobbied, Councillors, and members of the Planning Regulatory Committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before it has been exposed to all the evidence and arguments;
- b) rather, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant Planning Officer in order that their views can be reported to the Planning Regulatory Committee;
- c) if Committee Members do express an opinion then they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at the Planning Regulatory Committee;
- d) Members of the Committee other than those who are Councillors for the affected Division(s) - for which see paragraph (e) - should not openly declare which way they intend to vote in advance of the Committee meeting and of hearing the evidence and arguments on both sides; and
- e) a Planning Regulatory Committee member who represents a Division affected by an application is in a difficult position if it is a controversial matter around which a lot of lobbying takes place. If the Member decides to go public in support of a particular outcome - or even campaigns actively for it - it will be very difficult for that Member to argue convincingly when the Committee comes to take its decision that they have carefully weighed the evidence and arguments presented. In those circumstances, because of the issue of predetermination, the proper course of action would be for the Member to declare an interest and not vote. The arrangements for public speaking include an opportunity for the Division Member to make representations.

Similarly, a Planning Regulatory Committee member who decides to go public in support of a particular outcome for a planning matter which does not affect that Member's Division should not speak or vote on that matter when it comes before the Committee.

6.2 In addition:

- a) Councillors should not put pressure on officers for a particular recommendation;
- b) Councillors should not mutually agree with one another on how to vote on particular planning matters; and
- c) Councillors should pass any relevant written information which they receive to officers so that it can be reported or responded to.

6.3 The essential point is that decisions on planning applications should be taken in a fair and open manner, in the meeting and on the evidence presented to the meeting.

7. Group meetings

A protocol for group meetings is attached as Annex 1 to this code.

8. Pre-applications discussions

8.1 The County Council recognise that discussions between a potential Applicant and the County Council prior to the submission of a planning application - and even after its submission - can be of considerable benefit to both parties. However, it would be easy for such discussions to be seen to become part of the lobbying process. To avoid this, the County Council have agreed that all pre-application discussions should take place within the following guidelines:

- a) it should always be made clear at the outset that the discussions will not bind the County Council to making a particular decision and that any views expressed are personal and provisional;
- b) any advice should be consistent and based upon the Development Plan and material considerations. In addition, all officers taking part in such discussions should make it clear whether or not they are the decision maker;
- c) a written note should be made of all pre-application discussions. At least one officer should attend such meetings and a follow up letter is advisable at least when documentary material has been left with the County Council. A note should also be taken of pre-application telephone discussions. However, information shared at pre-application discussions should only be placed on the planning register if it is not considered to be confidential; and
- d) care must be taken to ensure that advice is, and is seen to be, impartial; otherwise a subsequent report could appear to be advocacy of a particular case.

8.2 Councillors and officers should avoid indicating the likely outcome of a decision. However, an officer whilst clearly making no commitment may on the basis of the structure and local plans and policy documents give information on the likely planning issues that would need to be addressed.

8.3 These guidelines apply equally to meetings called by third parties, such as Parish

Councils, to discuss planning applications.

9. Officer reports to Committee

9.1 Committee reports on planning proposals will comply with the following guidelines:

- a) reports should be accurate and cover, amongst other things, the substance of objections and the views of consultees. (There will be an Agenda note to say where full copies of third-party representations and views of consultees may be inspected);
- b) relevant points will include a clear exposition of the development plan, the site or related history and any other material considerations;
- c) the report should have a clear recommendation; oral reporting by officers (except to update a report or to report on late response from Committees) should be extremely rare and carefully minuted when it does occur;
- d) reports should contain a technical appraisal which clearly justifies a recommendation; and
- e) if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

9.2 Applicants or third parties who wish to bring matters to the attention of the Committee should do so in good time so that they can be incorporated in the written Committee Report. Information submitted less than 48 hours before the committee sits may not be seen until after a decision has been made and therefore not considered when determining the application. Similarly, the Chair may refuse to entertain material submitted for circulation on the day of the committee.

10. Public speaking at Planning (Regulatory) Committee

The County Council has procedures for public speaking at the Committee. These are set out at section (A) of Appendix 26 of the Constitution

11. Decisions contrary to officer recommendation and/or the Development Plan

11.1 The Law requires that where the Development Plan [i.e. the approved Minerals and Waste Plan and relevant Local and neighbourhood Plan(s)] is relevant, decisions must be taken in accordance with it, unless material considerations indicate otherwise. The personal circumstances of an Applicant will very rarely be a relevant consideration.

11.2 It follows that if the officer's report recommends approval of a departure, the justification for this should be included in full within the Report.

11.3 In addition, where the Planning Regulatory Committee is minded to take a decision contrary to the officer's recommendation, they should first give the officer the opportunity to explain the implications of the contrary decision.

11.4 If the Committee then makes a decision contrary to the officer's recommendation, the minutes should clearly state the reason(s) why, and a copy placed on the application file.

11.5 A Senior Legal Officer will always attend meetings of the Planning Regulatory Committee to ensure procedures are properly followed.

12. Committee site visits

12.1 Site visits can cause delay and should therefore only be used where the expected benefit is substantial, e.g. where the visit will significantly assist the Committee's understanding of the issues or in controversial cases or where it will demonstrate to the public or the applicant that Members have listened to their argument. The reason for the site visit should be minuted.

12.2 The purpose of a visit is to make a 'tour of inspection' by Members accompanied by an officer(s) who will point out any relevant issues and areas of interests/importance. It is not a meeting where any decisions will be made, or a formal minute written. Decisions will be taken at the next appropriate formal meeting of the Planning Regulatory Committee. However, a note will be drafted, and placed on file of salient issues and points such as:

Date, Venue, Attendance, Duration, Locations Inspected, Issues Addressed.

12.3 Invitations to the visit will be extended to other parties as appropriate, e.g.:

The District Council Parish Council

Local Member (where not a Member of the Committee)

The Applicant

Representatives of the objector(s)/supporters (where relevant)

Appropriate Consultees

These invitations will be sent out by the Head of Governance and Regulatory Services.

12.4 The visit will be chaired by the Chair (agreed or substitute) of the Planning Regulatory Committee. It will be at their discretion whether to allow those invited to the site visit to address the Members and this will be based on speaking on specific issues previously raised in writing. The Chair will need to ensure that parties are each treated fairly and equitably, and the appropriate standards of propriety are seen to be adhered to.

12.5 Members should avoid separate discussions with objectors or applicants during the visit and should not make unaccompanied site visits.

12.6 A substitute who attends the site visit should, if not substituting at the subsequent committee meeting when the application is determined, fully brief the committee member attending the committee meeting. The observations made by the substitute to the sitting member should be recorded in the minutes.

12.7 If a substitute who attended the site visit attends the subsequent committee with the sitting member (but is not voting) then the substitute should be given the opportunity to make comments to the meeting on the site visit.

13. Regular review of decisions

13.1 As part of the Members training programme the Planning (Regulatory) Committee will from time to time visit the sites of implemented planning permissions to assess the quality of decisions made.

14. Training

14.1 It is recognised that the planning system is complex, ever-changing and therefore essential that Councillors have adequate and regular training.

14.2 Training for members of the Committee (and substitutes) will take the form of mandatory and non-mandatory (but desirable) sessions. The mandatory training session consists of a half-day session which addresses the role of the committee. Before serving on the committee, Councillors must attend the session and must attend a “refresher” session on an annual basis while they serve on the committee. Shorter, 45-minute (non-mandatory) sessions will be provided prior to each planning committee. As much notice will be given of the training sessions as possible. The training programme will be the responsibility of the Executive Director of Community and Environmental Services in consultation with the Director of Governance.

15. Complaints and record keeping

15.1 If a member of the public or an applicant wishes to complain about the County Council’s treatment of a planning application, then in the first instance they should contact the Executive Director of Community and Environmental Services in County Council. The complaint will be investigated, and an answer given. If the complainant is not satisfied with the answer, the complaint should be put in writing to the Executive Director of Community and Environmental Services, if possible, using the County Council’s customer complaint form. They will investigate the complaint and provide a written response. If this is still unsatisfactory, the complainant should write to the County Council’s Head of Paid Service who will carry out an internal review independent of the Community and Environmental Services Department.

15.2 So that complaints can be fully investigated and, in any case, as a matter of general good practice, record keeping will be complete and accurate. Every planning application file should contain an accurate account of events throughout its life, with particular care being taken with regard to applications that are likely to be determined under officers’ delegated powers. Such decisions should be as well documented and recorded as those taken by Members.

15.3 Decisions taken by officers under delegated powers will be exercised in an accountable way which will include placing on the file written justification for the exercise of the powers in a particular way.

Annex 1 – Protocol for group meetings

1. Political Groups represented on the County Council may wish to hold pre-meetings prior to meetings of the Planning (Regulatory) Committee. In principle there is nothing wrong with this, but it is important that Members understand their purpose and that there must be no grounds for those interested in planning applications, be they the applicants or objectors, to misunderstand what happens in them.
2. This protocol therefore affirms that the purpose of the Group Meetings is for Group Spokespersons to feed back to the members of their Group on the Committee (or their official substitutes for that meeting) on relevant issues arising from their own briefings with officers. On this basis, the only persons who may be present at them are members of the Committee (or their official substitutes for that meeting) who will be attending the Committee Meeting which immediately follows. In particular, Local Members and those on the Panel of Substitutes who will not be substituting at that particular meeting will not attend except that substitutes may attend for training purposes.
3. There are existing procedures for Local Members to feed into the Committee any comments which they may have on an application. Provided these comments are received before the finalising of the Committee Report, normally two weeks before the meeting, they will be incorporated in it. In addition, there is an opportunity for Local Members to speak at the Committee Meeting itself. However, Local Members may occasionally wish to make their additional comments in writing and to deal with this it is proposed that a note be circulated to all Members of the Committee in time for any Group Meetings incorporating any additional views from the Local Member together with details of any further written representations received from other interested parties. The Chair or one of the officers will also refer to these additional comments during the introduction of the report.