

PART 4 – CODES AND PROTOCOLS

5. Member Planning Protocol

Introduction

- 1.1 The role of an elected member on the Planning Committee is a dual one. It involves balancing representing the needs and interests of individuals and the community with the need to maintain an ethos of impartial decision making on what can often be highly controversial proposals. This section of the Constitution sets out guidance for members of the Council in dealing with planning applications.
- 1.2 It should be noted that there is a distinction between committee members and visiting members. It is the role of committee members (including substitute members at individual meetings) to determine planning applications. They must be careful not to pre-determine proposals, or give the appearance of doing so, before the meeting at which the decision is to be taken. Visiting members, on the other hand, are not called upon to determine applications. They are free to make up their minds on proposals in advance of the meeting and address the committee either for or against applications.

Conflicts of Interests

- 1.3 Councillors who have substantial property interests or other interests, which would prevent them from voting on a regular basis, should avoid serving as members of the Planning Committee.
- 1.4 Councillors who are themselves, or are acting as agents for people pursuing a planning matter, should play no part in the decision-making process for that proposal. The identification of such proposals is important.
- 1.5 Members should not lobby on behalf of paying clients and/or provide advice to influence the Council's decision.
- 1.6 The councillor concerned should make any such interest clear to the Planning Service when submitting the planning application. Proposals will always be reported to the Planning Committee and not dealt with under delegated powers.

Discussions with Applicants

- 1.7 If councillors are involved in any type of discussions with applicants, either before or after a planning application is submitted or any other type of meeting, to discuss development proposals or other contact with applicants or their agents, it should always be made clear that the discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional.
- 1.8 Members of the Planning Committee should be especially careful in attending such meetings and avoid expressing support or opposition. Also, whilst members may receive information from applicants and give information to applicants and members of the public, to safeguard their impartiality they should maintain a clear distinction between receiving/passing on information and more detailed

involvement which could be mistaken for supporting or advocating a particular view or outcome.

- 1.9 Any developer presentations to councillors, outside the normal committee cycle, should be the subject of a formal request to the Head of Planning. Councillors will be limited to asking questions to clarify points of detail. There will be no discussion of the merits or demerits of the proposal.
- 1.10 All meetings between councillors and applicants relating to major project applications should be recorded in writing and should be attended by an officer.

The Representational Role

- 1.11 It is accepted that a key element of the councillor's role and duties is representing the views of the electorate on matters of local importance. Members of the committee are not in principle precluded from determining applications in their own wards, but they must be careful to avoid predetermination of the matter or the appearance of having made up their mind before the committee meeting. It is in this area that there can be the potential for conflict between this local representational role and the need for the Councillor to be part of the decision making process of the Council.
- 1.12 It is inevitable that councillors will be lobbied on planning proposals and asked to represent the views of the community. Lobbyists should be advised to make their representations directly to the Head of Planning to enable the content to be considered and, if appropriate, included in a committee report.
- 1.13 It is considered that councillors who are also parish council members should be allowed to give their views on particular proposals at Planning Committee meetings. In some cases a member of the Planning Committee may also be a member of a parish council that has commented on an application. The parish council's view on the application does not in principle prevent that member taking part in the Planning Committee's decision making process, but it must be clear that they have kept an open mind on the application and have not pre-determined it. When considering the application at parish level, the councillor should point out that, in the event of the matter being referred to the Council's Planning Committee, they would consider the matter afresh and with an open mind.
- 1.14 It is unwise for a member to express a final personal view on a planning application before the committee meeting at which the application is to be determined if they wish to participate fully in the meeting at which the decision is made (i.e. vote). Additional information is often received and further representations made up until the point of the committee meeting. A councillor should not give the impression that when voting on an application they would not be influenced by any new information that may be put before them. To act in this way may give the appearance that a councillor has predetermined the matter by making up their mind before they have had regard to all of the relevant information and matters arising during the debate. That a councillor had (or had given the appearance of having) pre-determined an application can form the basis of a legal challenge seeking to overturn the committee's decision.
- 1.15 A decision on a committee application cannot be made before the Planning Committee meeting. Therefore, no political group meetings or other meetings will

take place prior to the committee meeting with the specific purpose of instructing councillors how to vote or for councillors agreeing how to vote.

- 1.16 Councillors should also not put undue pressure on officers to put forward a particular recommendation.
- 1.17 Visiting members will be restricted to a period of five minutes speaking per item, with any extension to the time limit being at the sole discretion of the Chair.
- 1.18 If a Councillor calls in an application, they should not take part in the decision-making process for that application.

Chair's Pre-Meeting Briefing

- 1.19 Briefing meetings with the Chair and all other party Spokespersons may be held as they can be helpful to explain the background to the proposals on the Planning Committee agenda and provide an opportunity for councillors to ask officers to provide further clarification of any issues at the committee meeting. These briefings may be held remotely.

Site Visits and Virtual Site Visits

- 1.20 Site visits, whether 'virtual' or 'in person', organised and guided by planning officers, are to ensure that members of the Planning Committee have a clear understanding of the issues relevant to a planning application. For that reason, councillors who are unable to commit to attending the regular organised site visits before Planning Committee's meetings should not sit on Planning Committee.
- 1.21 Planning Committee site visits will be held virtually in the 7-day period before the meeting, usually the day before the Planning Committee meeting and using appropriate technology. Members will often have existing local knowledge of a site and may also visit the site surroundings themselves on an individual basis if they so wish, without entering the site or engaging with any third party or the applicant. In exceptional circumstances, e.g. for some major applications, it may be necessary to arrange an in-person group site visit to a particular site, where Councillors will be accompanied by a planning officer.
- 1.22 Members should not participate in the debate or vote on an item at Planning Committee unless they have previously attended the site visit for that item. Members' substitution arrangements must be made in good time so that proposed substitute Members can attend the Planning Committee site visits. The Chair of the Committee shall, but only in exceptional circumstances, be entitled to allow councillors to participate at Planning Committee notwithstanding that the councillor concerned has not attended the organised site visit.
- 1.23 Site visits are carefully organised to ensure that the purpose, format and conduct are clearly established and adhered to. Planning officers will attend all organised site visits to draw Councillors' attention to relevant planning matters and to ensure that their questions can be answered.
- 1.24 Site visits will normally take place the day before the Planning Committee meeting when the application is due to be considered. They will be organised and conducted by officers and not by individual councillors on their own.

- 1.25 Site visits constitute a part of the formal committee process and standing orders and provisions of the Member Code of Conduct, especially in relation to Members' interests, apply.
- 1.26 The purpose of site visits is for councillors as a group to have facts pointed out by officers and questions responded to, not for there to be a debate about issues, nor for any decision to be made on the application. Debate must only take place at the committee meeting.
- 1.27 In the event of an exceptional in-person site visit, unless required to permit or regulate access to the site (e.g. for safety reasons) the site owner, applicant, agent or other third parties will not normally be invited to attend. In all cases, interaction with third parties should be minimised and avoided entirely where possible. If it is necessary to seek information from any third party on site this will be done by an officer. In the case of virtual site visits, only Councillors and officers will be invited to attend.
- 1.28 A note of those councillors attending each site visit will be kept. This will be confirmed at the Planning Committee meeting and recorded in the minutes.

Public Speaking at Committee

- 1.29 Members of the Planning Committee should not allow members of the public or visiting members to communicate with them during the committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.

Declarations of Interest

- 1.30 Members are reminded of the need to have very close and careful regard to the rules on interests and pre-determination when discharging Planning Committee duties. Councillors should familiarise themselves with the Member Code of Conduct and the Lawyers in Local Government /Local Government Association Model Planning Code or Protocol from time to time in force. Any queries or concerns should be raised with the Director of Governance at the earliest opportunity.

Decisions Contrary to Officer Recommendations

- 1.31 If the Planning Committee makes a decision contrary to the officer recommendation (whether for approval or refusal), the committee must state its reasons. Where the decision is to approve, it must give an outline of conditions and the reasons. These will be minuted and a copy placed on the application file. The officer should be given the chance to explain the background to the officer recommendation and the implications of the contrary decision.
- 1.32 Councillors should make sure that, if they are supporting a decision contrary to the officer recommendation or the Local Plan, they identify and understand the planning reasons leading to this conclusion/decision. Individual councillors who are proposing or seconding a decision contrary to the officer recommendation must give the reasons prior to the vote being taken and these must be recorded. Councillors should be aware that they may have to justify the resulting decision by giving evidence in the event of any challenge.

Planning Conditions

- 1.33 If councillors wish to add or amend planning conditions, the Planning Committee should delegate the drafting of such conditions to the Head of Planning, but must explain why they consider the change is required.
- 1.34 In sensitive cases, the drafting of conditions and/or planning obligations may be subject to further consideration at a subsequent meeting of the committee.
- 1.35 Minor amendments to planning conditions should be delegated to the Head of Planning.

Planning Obligations

- 1.36 Members of a Planning Committee should, when considering the merits of an individual planning application, consider any relevant planning obligation which has been offered by the applicant or agent.
- 1.37 Councillors should avoid becoming involved in discussions with applicants, prospective applicants, their agents, landowners or other interested parties regarding benefits which may be offered to the Council or benefits which the Council itself wishes to obtain.
- 1.38 Where possible and prior to Planning Committee Meetings, heads of terms of s.106 agreements should be drawn up in full, so that members are fully informed of all matters covered.
- 1.39 Following the Committee's resolution, if there are significant amendments¹ to s.106 agreements (which were referred to the Planning Committee) prior to their signing/sealing, these should be referred back to Planning Committee Chair and Ward Members and, if appropriate, to Planning Committee. Minor amendments² to planning obligations before the signing of the s.106 agreements are delegated to the Head of Planning.
- 1.40 After the signing/sealing of a s.106 agreement that has been referred to the Planning Committee, if a variation is sought which involves important policy areas or is likely to have a material impact on local communities, this should be referred to the Planning Committee Chair and the Ward Members and, if appropriate, referred back to Planning Committee.

Training

- 1.41 Councillors should not participate in decision making at meetings dealing with planning matters if they have not attended the mandatory planning training prescribed by the Council.
- 1.42 Members of Planning Committee should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, regulations, procedures, Codes of Practice and the Development

¹ These will normally constitute removing already imposed planning obligations or adding new obligations or significantly amending agreed contributions.

² These will normally involve minor increases or decreases in figures to agreed contributions.

Plans beyond the minimum referred to above and thus assist them in carrying out their role properly and effectively.

- 1.43 Members of Planning Committee should participate in a periodic review of a sample of planning decisions to ensure that their judgments are based on proper planning considerations. The review should include examples from a broad range of categories, such as:
- a. major and minor development proposals
 - b. permitted departures to the development plan
 - c. significant allowed appeals;
 - d. major listed building works;
 - e. associated infrastructure

Planning Protocol and Member Code of Conduct

- 1.44 Any breach of the Planning Protocol will be treated as a breach of the Member Code of Conduct.