

Protocol of Good Practice on Development Control Matters

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1. Introduction

This Protocol applies to both Councillors who serve on the Development Control Committee and officers who support its functions. The Protocol supplements the County Council's Codes of Conduct for Councillors and officers, and addresses the particular issues faced by Members who serve on the Development Control Committee.

Employees of the County Council who are Chartered Town Planners are bound by the Royal Town Planning Institute (RTPI) Code of Professional Conduct and all officers whether or not they are members of the RTPI are expected to act in accordance with the Code applicable to RTPI Members.

2. Training

The planning process requires decisions to be made within a complex framework which is continuously evolving through legislation and case law. For that reason, regular training is provided to all Councillors on the planning process. As well as initial training for Councillors, updates will be provided when required to ensure Councillors are up to date on issues and procedures.

Councillors who sit as members of the committee should ensure that they have received up to date training on development control matters, and it is strongly recommended that councillors whose training and understanding is not up to date should not sit as members of the committee.

3. Declaration of Interests

Rules in relation to declarations of interest at the Development Control Committee are the same as apply to all other meetings of the council. Councillors who are also district councillors should declare a non pecuniary interest in items relating to applications made by their district council under consideration. Councillors do not need to declare an interest in an application simply because it is in the division they represent or in their own neighbourhood, unless this specifically affects their land or property as defined in the Code of Conduct.

4. Predetermination

Councillors on the Development Control Committee must take care to ensure that they do not predetermine any issue that comes before them. Predetermination effectively means forming a judgement on a matter before it comes to committee that you would be unwilling to change.

The law says a decision maker was not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because:

- the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, and
- the matter was relevant to the decision.

The Development Control Committee considers planning applications some of which may be controversial matters that are of interest to the public. It is possible that Councillors will be involved in campaigns for or against development proposals. This does not in itself prevent a councillor from being a member of the committee and taking a decision on such an issue.

However, Councillors should take great care in any campaigning they do, not to express views which appear to demonstrate that the councillor has fixed their view and would not listen to the evidence presented at committee. This applies to both traditional campaigning and publicity and to social media, such as Twitter or Facebook.

5. Social Contacts

Councillors and officers should exercise caution about their social contacts with known developers, agents, groups and associations, especially when developments are contemplated or applications are being proposed or being considered and when controversial decisions are likely to be made.

Councillors and Officers are required to declare any gifts or hospitality over the value of £25, even where it is declined.

6. Development Proposals Submitted by Councillors

- Councillors who act as agents for people pursuing planning matters with the County Council should play no part in the decision making process for those proposals. Likewise, if they submit their own proposal to the County Council they must play no part in its processing;
- the Council's Monitoring Officer should be informed of such proposals;
- any such planning applications should be reported to the Committee and not dealt with by officers under delegated powers.

Under the terms of the County Council's code these applications would result in a Councillor having a pecuniary interest and the Councillor concerned would need to withdraw from any consideration of the matter. Although he/she must not seek to improperly influence a decision, the Councillor would have the same rights as a member of the public in explaining or seeking to justify the proposal to an officer prior to its consideration by the Committee.

7. County Council Developments

Proposals for the County Council's own development must be treated in exactly the same way as those of private developers.

8. Lobbying of and by Councillors

Lobbying of members

Councillors may be subject to lobbying in relation to decisions due to be made by the Development Control Committee. As far as possible, Councillors should restrict themselves to giving procedural advice and avoid expressing an opinion that may be taken to indicate predetermination.

Councillors should make it clear they can only make a final decision after having considered all the information at Committee.

Group Meetings

Group meetings prior to the Committee meeting should not be used to decide how Councillors should vote. The Ombudsman has determined in relation to planning that the use of whips or similar political instructions to heavily or decisively influence the outcome of a planning application can amount to maladministration.

Lobbying by members of the Committee

Members of the Development Control Committee should normally avoid organising support for or against an application and also should avoid lobbying other Councillors. This should also apply to any Members of the County Council.

Pressure on Officers

Councillors should not put improper pressure on officers for a particular recommendation.

9. Pre-Application Discussions

Any pre-application or other discussions with Councillors or officers which take place before a decision is taken should follow clear guidelines:

- it should be made clear that the discussions will not bind the Council to a particular decision and any views expressed will be personal and provisional because not all consultations will have taken place or relevant information be at hand at that stage;
- advice should be consistent and based on the development plan and other material considerations. Officers taking part should make clear whether or not they are the decision-maker;
- notes should be made of all potentially contentious meetings or telephone discussions. At least one officer should attend the meetings and a follow-up letter is advisable;
- advice given should not be, or be seen to be, partial.

10. Officer Reports to the Development Control Committee

The following principles will be adhered to in the production of reports to the Development Control Committee:

- reports should be accurate and cover, amongst other things, the substance of objections and the views of those consulted;
- there should be a clear exposition of the development plan policies, the site, related history and any other material considerations;
- there should be a written recommendation; oral reporting should be limited to updating and should be minuted;
- the reports should contain technical appraisals which clearly justify the recommendation;
- if the recommendation is contrary to development plan policy, the material considerations justifying the departure should be clearly stated.

11. Decisions Contrary to Officer Recommendations and/or the Development Plan

Departures from the Development Plan

Decisions should be taken in accordance with the Development Plan unless material considerations indicate otherwise. Departures must be advertised as such and, if it is intended to approve the application, the material considerations must be identified and it must be stated why they override the plan policies. Depending on type and scale, the application may have to be referred to the Secretary of State if the Committee is minded to approve. Justification for the approval of the departure must be included in full in the report.

Decisions Contrary to Recommendation

The Committee must make clear its reasons for any decision which runs contrary to the officer recommendation, including the policies which the Committee considers the proposal to be contrary to, together with technical evidence as far as possible and these will be recorded in the minutes. Members may seek advice from officers on such policies and how they may be used to support a decision. It may be appropriate to defer the matter until a subsequent meeting so that full reasons can be set out.

Committee members voting to reject or approve an application contrary to officer recommendation should be aware that they may be expected to give evidence in support of their decision in the event of any subsequent hearing or public inquiry.

Changes to Conditions

Where Councillors wish to change the recommended conditions on an approval, the officers should be asked to draft any new conditions or amendments to conditions to be agreed at the meeting, or at a subsequent meeting, or by specified senior officers under delegated powers.

12. Appeal

If the council refuses planning permission or imposes conditions that the applicant considers unreasonable, the applicant can appeal to the Secretary of State of the Department for Communities and Local Government within a period of six months from the decision notice.

Any such appeal is then considered by an independent inspector of the Planning Inspectorate who will report the findings to the Secretary of State. The appeal process can either be by written representations, an informal hearing or by a full public inquiry, depending on the complexity and nature of the case.

If the county council or the Secretary of State grants planning permission, there is no right of appeal for those who object to it. It is possible to challenge the decision on a point of law but this would be a matter for the courts

13. Committee Site Visits

Site visits should be the exception rather than the rule. There must be the expectation of substantial benefit from the visit. They should not be used as a means of delaying the determination of a planning application.

The decision for making a site visit should be based on:

- difficulty in visualising the proposed development from the plans and any supporting material, including photographs of the site;
- good reasons why the comments of the applicant and objectors cannot be adequately expressed in writing;
- the particularly contentious nature of the proposal;
- request from the Electoral Division Member or the Planning Officer, subject to expected benefit being substantial.

Where Members of the Committee pass a resolution in favour of undertaking a site visit, it is expected that those Members so voting attend the visit.

Procedures for Site Visits

- Site visits will be organised to ensure the purpose, format and conduct are clearly established at the outset and adhered to throughout the visit.

- Members should have regard to the County Council “Guidelines for Member Site Visits”. (Annex 1 to this Protocol). Members should not disclose details of the site visit to third parties. Site visits are for the benefit of Members of the Committee only and are not intended to be a forum for debate with objectors.
- Applicants for planning permission may attend such site visits but only to answer questions raised by Members regarding the purpose, location and design of the development.

Lancashire County Council Guidelines for Member Site Visits

1. Status and Purpose of these Guidelines

The purpose of the guidelines is to assist the Chair and Members of the Committee in the conduct of site visits. Site visits require careful thought and management, especially where groups of campaigners for or against a proposal may be present. It is essential that the site visit is, and is seen to be, part of the impartial gathering of information about an application, in order to ensure confidence in impartial and transparent decision making.

2. The Purpose of Site Visits

Site visits are not meetings of the Committee and are not intended to involve discussion of the merits of any planning application. The appropriate place for any such discussion is a formally convened meeting of the Committee.

Site visits are intended to give Members of the Committee the opportunity of visiting and viewing the site and its locality.

Site visits should be the exception not the rule. They should not be used as an excuse to delay the determination of a planning application. They are expensive and time-consuming and excessive use of them detracts from their true value.

3. Role of the Chair of the Committee

The Chair is responsible for the conduct of the site visit and his/her decision is final on all issues. In his/her absence the Deputy Chair will assume responsibility.

4. The Local County Councillor

The County Councillor for the division in which the application is located will be invited to attend the visit whether or not they are a Member of the Committee. The local County Councillor is expected to abide by these guidelines.

5. Information to be provided to Members

To assist members a report containing details of the application and general observations on the development and level of representations will be provided to Members prior to the visit.

6. County Council Officers

Officers attend the site visit to assist Members. Officers will acquaint Members with details of the application and the principal planning issues. They will draw Members' attention to details on the site itself and at other places in the locality of the site as appropriate. References will be made to the planning application in question but these will be for the purpose of explanation and should not be taken as implying any partiality on the part of the Officers concerned.

7. Applicant and Landowner

The Applicant will be asked to arrange access to the site. It is not possible to prevent either the Applicant or a Landowner, if separate, from attending the visit. However, the purpose of the visit will be made clear to them and it will be explained that they have no right to address the Members although they may wish to be prepared to answer any questions which Members may wish to raise. Separate arrangements are in place for Applicants to address the committee if they wish to do so

8. Other Interested Parties

It may be the case that campaigners for or against a proposed development are at a site in order to lobby Members. Members should avoid being drawn into individual discussions or debates with campaigners. In general, members should stick to procedural comments, and not express opinions about the proposals which may be taken as an indication of predetermination or otherwise apparently indicate a councillor's view of a matter. Separate arrangements are in place for campaigners to address the committee if they wish to do so.

9. Transport

Normally a coach or similar will be arranged to provide transport for Members to the site and during the site visit. Whilst it may be more convenient for some Members to meet the coach at the site, the visit itself will be conducted from the coach. This ensures that all Members present receive all information relevant to the visit and that the visit can be conducted in an orderly manner.

10. Health and Safety

Sites for proposed developments may present a range of health and safety issues. Members should adhere to any health and safety guidance issued by officers in relation to the site and visit.