

PART 5, SECTION 4

- PROTOCOL ON PLANNING PROCEDURE

1 Introduction

The purpose of this protocol is to provide Members with guidance regarding their role in determining planning applications, in particular, when interacting with applicants, objectors or developers. Ward members, who are not members of the Planning Regulatory Committee but who want to address the Committee, also require guidance on interaction over their contact with applicants developers and objectors.

The protocol is designed to offer that guidance and help Members understand their role and the responsibilities associated with that role.

In addition, District Audit has also raised the need for a protocol on planning in their document, "Probity in Planning".

2 Natural Justice

These principles apply throughout public administration. They are fundamental principles of administrative law and should be adhered to when determining any planning application.

The two principles of Natural Justice are :-

1 (a) The rule against bias

2 (b) The duty to act fairly/duty to hear both sides or the other side.

3 The Rule Against Bias

The first principle means that no Member should remain and be a party to a decision which affects his or her own interests. This is largely the process by which Members declare interests.

In addition to the common law rule against bias, Members must be mindful of the provisions of the Council's Code of Conduct with regard to personal and prejudicial interests, referred to below.

If Members in a Committee Meeting are in any doubt about the interest they are advised to err on the side of caution and leave the chamber. If a Member does not take this action it can lead to criticism or a challenge to the decision on the basis that a Member with an interest remained within the Council Chamber and tainted the integrity of the decision.

4 The duty to act fairly/hear both sides or the other side

Both sides should have an opportunity to put their view forward and the decision making body must consider both sides - applicant and objector - before coming to its decision. The Member's mind should not be closed until the final decision is made. A Member's mind will be closed if he or she has already come to a decision on an application prior to entering the Council Chamber.

5 Example of Maladministration

The Local Ombudsman recently made a finding of maladministration against a Merseyside Council because a Member failed to declare an interest and leave the meeting. The Member had a house that was situated near to and affected by a planning proposal. The Member did not declare an interest and remained in the Chamber and voted on the application.

It is important to the integrity of the Planning process and to open and honest governance that justice must not only be done to the planning application – but also that it is seen to be done, thereby giving the public confidence in the system.

There have also been examples of maladministration where Members have encouraged their colleagues to set aside the advice of professional officers by introducing factors which do not amount to material planning considerations. These can include personal circumstances, or land ownership issues. Members should always be cautious and stick only to valid planning considerations.

6. Declarations of Interest and Leaving the Chamber

Under the Council's Code of Conduct, where a decision would affect the well-being or financial position of a Member, or a relative or friend of theirs, the Member must declare a personal interest. The word "friend" is not defined in the Code, but implies more than a passing acquaintance or knowledge.

Where a Member has a personal interest as set out in the Code of Conduct, he or she must give careful consideration as to whether that interest is also a prejudicial interest (that is, one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the Member's judgment of the public interest). In considering whether the interest is prejudicial, Members are advised to err on the side of caution. However, simply knowing the Applicant does not equate to a prejudicial interest. If the personal interest is not a prejudicial interest, the interest must be disclosed to the meeting.

Where a Member has a personal interest which is also a prejudicial interest under the Code of Conduct, they must leave the chamber – they are not permitted to return to the public gallery for the debate and they should not be seen by other Members when they are making the decision. This is a requirement of the Code of Conduct. If a Member who had declared an interest was present or could be seen to watch the proceedings, this could in any event be sufficient to taint the process.

Because of the quasi-judicial, regulatory nature of the work of the Planning Regulatory Committee, and the requirements of natural justice, Members are advised to err on the side of caution when considering the matter of interests.

Dispensations from the Standards Committee are available in limited circumstances, where the existence of prejudicial interests would mean that the political balance principles could not otherwise be complied with.

It should be noted that the Court of Appeal case of Richardson –v- North Yorkshire County Council confirmed that a member of a Council who is not a member of the Planning Committee, but who has a personal and prejudicial interest in an application being considered by the Committee, may not participate and is required to withdraw from the meeting. This means that a Member may be placed in a more disadvantageous position than ordinary members of the public in regard to participating in or observing at meetings.

When declaring interests at meetings, Members should make it clear what level of interest they are declaring, and whether the interest prevents them from taking part in the decision making process.

7.6 Party Politics

A Member must not blindly follow the recommendations of their political party. A decision on a particular planning application should not be dictated to by party politics. Party whips should never be used. The Member is part of the decision making body. As far as planning applications are concerned the decision making body is the Planning Regulatory Committee. That Committee sits in a quasi-judicial manner and each decision is made on its own merits, within the Development Plan framework, supported by legislation, government advice and other Council land use policies. Therefore each decision has to be made on the information put before the Committee and should take into account the

development plan, the impact of the individual development and any individual site characteristics – not party politics.

8.7 — Allegations of Bias

As a Member of the Planning Regulatory Committee the time for decision making is after the Members~~(s)~~ has/have heard all relevant considerations i.e. after the application has been presented to the Members in the Committee meeting and when the presentation of the application is completed. Therefore, a decision should not be made before the agenda is sent out, at a site visit or immediately before the meeting begins. If a Member has made his or her mind up before the application is fully presented then this renders the application decision open to challenge. This would be on the basis that the application was predetermined, was not considered fairly and that the Member's conduct showed bias. To predetermine an application flies in the face of the principle of the rule 'to hear both sides'.

Where the Council is the landowner, developer or applicant, or the proposal has been discussed or supported by another Committee of the Council, a Member who has expressed strong views on the matter is likely to have fettered his discretion if his involvement could make him perceived by the public as being no longer able to act impartially or to determine the proposal purely on its planning merits.

In most cases, however, the fact that a Member has been involved in a decision to promote the development of land in the public interest, does not prevent them from making decisions on the matters of detail. Members approving specific land use allocations in a Local Development Framework for example, would not be prevented from deciding subsequent planning applications. They would be expected to use their decision making abilities to ensure that schemes conform with the requirements of the Framework.

9.8 — Media Exposure

A Member should never make any public declaration on an application until the application has been determined. If a Member makes an announcement (that is one sided) prior to the application being determined then that Member is at risk from an allegation of bias i.e. they have not kept their mind open until all matters are before them. In these circumstances the Member may be advised to refrain from taking part in the decision making process to ensure the decision is not tainted. This will be particularly important where there is adverse public reaction to a planning application in the local press some time before the application has received a recommendation from Officers.

10. Parish Councillors

A Member of the Planning Regulatory Committee who is also a parish councillor may speak and vote at both parish and City Council level on the same planning issue. Members who take this course of action will need to declare membership of the parish council as a personal interest at City Council level.

As indicated above, Members are under an obligation to approach decision-making with an open mind, prepared to listen to all sides of the argument. Dual-hatted Members who choose to speak and vote at parish and City Council level will need to make it very clear that their vote at parish level represents a preliminary view and that they will reconsider the matter afresh at City Council level. Failure to do so may result in a challenge on the grounds of predetermination.

Different considerations will apply if the parish council is the applicant in relation to a particular planning application. In that situation a parish councillor would be likely to have a prejudicial interests at the Planning Regulatory Committee.

It must always be remembered that debate at parish council meetings takes place without professional advice from a Chartered Town Planner. It is likely, therefore, that considerations may involve matters not properly restricted to planning considerations. City Council Members involved in such discussions should take specific care to qualify their views accordingly.

11. Lobby Groups

A Member of the Planning Regulatory Committee who is a member of a lobbying group which has publicly expressed support for or against a planning application will need to consider whether he/she has a personal and prejudicial interest. If the matter will have a direct impact on the lobby group, the Member is likely to have a prejudicial interest. If the matter relates only indirectly to the lobby group, the Member may have a personal or prejudicial interest in it, and will need to consider in particular the nature of the Member's involvement with the lobby group, the publicly expressed views of the lobby group, and what the Member has said or done in relation to the particular issue.

Further guidance can be obtained from the Standards Board publication "Lobby groups, dual-hatted members and the Code of Conduct"

912.—Contact by an Applicant Agent Developer or Objector

It is inevitable that Planning Regulatory Committee Members will be approached frequently by a variety of people during the planning process. It is therefore important that Members are clear on the nature of the advice and the comments that they give.

MEMBERS SHOULD AVOID GIVING ANY COMMITMENT OR THE IMPRESSION OF ANY COMMITMENT OR VIEW that is held regarding any particular planning application yet to be determined or any matter that may result in the submission of a planning application. It is inappropriate for a Member to meet with the Applicant or Developer to discuss the proposals. Instead they should be directed to the Chief Head of Planning and Building Control Officer and his staff. Equally, any Member requiring further information about the application should contact the Chief Head of Planning and Building Control Officer and his staff.

If a meeting or telephone call does takes place then Members are advised to avoid comments which infer predetermination such as:

- 'I am completely against any development there'
- 'I am all for any kind of economic regeneration'
- 'The developer X normally builds to a high standard'

In the very rare circumstances where a meeting does take place between a Member and the Applicants or Developers it essential that an officer is present and the meeting properly minuted. The Audit Commission states that in these circumstances "all meetings should be attended by officers, fully minuted and reported to Committee in order to ensure transparency". Therefore those minutes should be reported to the Planning Regulatory Committee prior to any decision being made.

Any significant contact with the applicant or other parties should be reported to the Head of Planning and Building Control, explaining the nature and purpose of the contacts and the member's involvement in them.

13. Presentations by applicants/developers

A Member should not attend a planning presentation unless an officer is present and/or it has been organised by officers. A Member should be aware that a presentation is a form of lobbying and should not express any strong view or state how he or other Members might vote.

Where a public meeting is arranged by a developer to present to local residents a scheme which the developer intends to submit, there is nothing to prevent Members attending to obtain information, but they should not make any comment.

4014. Approach by a Constituent

If a constituent approaches a Member about an application Members can give advice on planning procedure rules and policy so far as they are able but it is always advisable to direct the constituent to staff of the Planning Service in any event. When speaking to constituents Members must not give any impression of any commitment to the application itself.

145 Approach by a Non-Constituent

If a non-constituent approaches a Member, Members can advise the person on planning procedure rules and policy as far as they are able or alternatively ask them to contact their own Ward Member or the Chief Head of Planning and Building Control Officer and his staff.

162 Disclosure of Information

It is important that Members are clear on what information is a matter of public record and what information is not. Details contained within the planning application are open to the public and the planning process and planning policies are all within the public domain. However, informal observations of the Planning staff will not be information available to the public. If a Member wishes to rely on the observations or comments of the officer then the Member must ask the officer if the information is of a public or confidential nature. If the Member intends to refer such information to a member of the public i.e. not a Council Member, they must make this clear to the officer.

173 Hospitality Offered to Members

It is advisable in all circumstances to simply refuse any hospitality. To accept creates the risk that there has been undue influence on the planning process. In the rare event that the hospitality is accepted it must be declared to the Council in accordance with paragraph 17 of the Council's Code of Conduct.

18. Lobbying of Planning Officers

Members must recognise that they are part of the organisation which employs professional staff who will make their recommendations on planning applications. Public confidence in the planning system is dependant on planning officers being able to reach open and impartial recommendations on applications, based on lawful planning considerations only, without being improperly influenced in reaching their conclusions by political pressure. Whilst it is entirely proper for Members to enquire about progress on applications and to ask for clarification about the reasons for any recommendation, they must take particular care to ensure that they do not give the impression of applying pressure to officers to make any changes to their recommendations. To do so would leave them open to accusations of applying inappropriate pressure in the form of lobbying.

4419. Lobbying of the Planning Regulatory Committee by other Members

~~The same principles apply.~~ Members should not give an impression of any commitment or view on the application itself and Planning Regulatory Committee Members must consider all matters before forming a view. If the lobbying Member is an applicant the Committee Member must critically assess their relationship to the Applicant-Member. The test is to ask yourself 'is the relationship such that a reasonable person would consider that remaining in the Planning Regulatory Committee meeting when the decision is made would give the impression of bias'. Simply being a member of the same political party does not necessarily equate to a personal or prejudicial interest but Members must ask themselves about their relationship, e.g. Are they friends outside the political arena? Do they socialise with each other? . Members are advised to err on the side of caution.

4520. Social Contact

Members of the Planning Regulatory Committee should minimise their direct social contact with known Developers and Agents, especially when developments are contemplated or applications are being proposed or when controversial decisions are likely to be needed.

4621. Site Visits – Informal or Formal

Again, if Members of the Planning Regulatory Committee, whether or not on a site visit, enter any premises which –

- are the subject of/ affected by a planning application or
- are known to be likely to become subject to or affected by a planning application

for any purpose in connection with such an application/proposed application, the Member should be careful to use the inspection purely as a fact-finding exercise and not express any opinion on the merits of the application. Members must not give any kind of indication of what their views of the application are at this stage as they would be at risk of predetermining the issue.

4722. Purpose of Formal Visits

The purpose of a Committee site visit is to give Members the opportunity to see the prospective development site and to see it in context, in relation to the surrounding areas and the neighbouring uses. The Planning Officer will normally identify the site and make a short factual presentation explaining the proposed development and perhaps highlighting issues which initially prompted the site visit. The Planning Officer will answer, where possible, questions raised by the Committee.

Site visit are not intended to pre-empt the debate. Questions should therefore relate to matters of factual information about the site, the development and the surrounding area rather than a detailed debate regarding the principle or merits of the proposal. Any detailed debate regarding the above should await the formal Committee meeting when all Members of the Committee and members of the public who attend can hear the arguments in a proper setting.

4823. Public Attendance at Formal Site Visits

Members will often be met by numbers of local residents at a site visit as they are often high profile cases which are under consideration. It is important that the Planning Officer or the Committee Clerk explains clearly the purpose of the site visit to residents before the site visit commences. Members of the public can listen to the officers' presentation but should not join in any subsequent discussion. Public views or objections will be fully presented or reported at the Committee meeting and should properly form part of the overall debate and discussion at that time.

Members should avoid getting into individual dialogue with local residents, although it is appreciated this can be difficult to avoid. The Chairman can invite a spokesperson for the residents to answer any specific questions Members may have but this should not become a general debate about the proposal. If there is a request to visit the site from a particular position or location this can be undertaken at the Chairman's discretion. If it is agreed, all Members should accompany the Chairman if possible.

The applicant or his representative will also be invited to attend the site visit. They ~~is~~ are present simply to answer any questions the Committee Members may have but should not address the Members on the general merits of the case. Again the Planning Officer or Chairman should explain this situation to the applicant or representative if necessary.

None of the above text on site visits is intended to stifle debate or prevent local residents from having their say. The proper place for such a debate is however at the Committee meeting when

neighbour/local views will be properly reported and a proper discussion in a public forum can take place.

1924. Ward Members Speaking at Planning Regulatory Committee who are Not Members of the Planning Regulatory Committee – Contact by the Applicant, Developer or Objector

When a Ward Member speaks at a Committee it is important that they make it clear whose views they are expressing. Are they speaking for themselves only? Are they speaking on behalf of their Ward? Are they speaking on behalf of a group of residents? An important difference between Planning Members and Ward Councillors who are not Members of the Planning Regulatory Committee is that Ward Members are permitted to express a view prior to entering the Council Chamber. Also, a Ward Member can inform other Members of their own view. If they are asked to meet with a party who has an interest in an application it should be made clear to that party that the Ward Member cannot lobby Members of the Planning Regulatory Committee – they can inform the Members of their concerns etc but they cannot lobby.

If the applicant/objector/third 3rd party asks for information Members should advise them to contact the Planning Service staff. The Ward Member can comment on how they would like the decision to be determined but must not give any impression of interfering with the normal democratic process. Comments like 'I will have a quiet word with the Chairman' 'the Group will all vote together' or 'it will be sorted' are unacceptable. They infer predetermination and interference, which at the very least is against an open and transparent planning system.

Instead the Member should make it quite clear that they are able to express an opinion to the Committee but the final decision will be made by the Members when they have considered all matters including the Local Development Plan.

When a non Planning Regulatory Committee Member addresses the Committee, it is advisable that they disclose to the Committee any contact they have had with the applicant and/or agent and/or interested party. For example if a Ward Member meets with a Developer and is in favour of an application they should state 'I am the Ward Member and I am here to represent my own views on this matter. I have spoken to the Developer and I have looked at the plans in detail. I am for the application and consider the benefits are ...'. Or 'I am the local Ward Councillor and I am here to represent the views of what I consider is the majority of the residents of my Ward. I have had numerous telephone calls and letters complaining about this. I have met with local resident groups and I am unhappy with the proposal before Members because ...'

A member of the Planning Regulatory Committee may take the opportunity to exercise separate speaking rights as a Ward Councillor where the Member has fettered his/her discretion to participate in the decision making, but does not have a personal and prejudicial interest. However, the Member should make it clear before commencement of the item that he/she is speaking in this capacity, and should remove him/herself from the Committee seating area for the duration of that item.

2025. The Public Participation Process

With the introduction of the public participation process members of the public now have the opportunity to address the Planning Regulatory Committee. Each individual has 3 minutes to speak. Ideally the person would refer only to planning issues. However realistically speaking this is unlikely to occur and in practice they may refer to non-planning and land use matters.

Planning Regulatory Committee Members need to sift through such presentations and concentrate on the land use principles, distinguishing between issues that are and are not relevant to the planning decision. Issues that are not planning matters need to be dismissed or given very little weight, while land use issues should be taken into account and given great weight.

Personal circumstances and financial details are rarely, if ever, determining issues. Members have to give proper weight to the Development Plan and other material land use considerations.

21 Declarations of Interest and Leaving the Chamber

~~Under the Council's Code of Conduct, where a decision would affect the well-being or financial position of a Member, or a relative or friend of theirs, the Member must declare a personal interest. The word "friend" is not defined in the Code, but implies more than a passing acquaintance or knowledge.~~

~~Where a Member has a personal interest as set out in the Code of Conduct, they must give careful consideration as to whether that interest is also a prejudicial interest (that is, one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the member's judgment of the public interest). In considering whether the interest is prejudicial, Members are advised to err on the side of caution. However, simply knowing the Applicant does not equate to a prejudicial interest. In the district of Lancaster and Morecambe, it is highly likely that a Member will have some knowledge of an Applicant at some time.~~

~~If the personal interest is not a prejudicial interest, the interest must be disclosed to the meeting.~~

~~Where a Member has a personal interest which is also a prejudicial interest under the Code of Conduct, they must leave the chamber — they are not permitted to return to the public gallery for the debate and they should not be seen by other Members when they are making the decision. This is a requirement of the Code of Conduct. If a Member who had declared an interest was present or could be seen to watch the proceedings, this could in any event be sufficient to taint the process.~~

~~Because of the quasi-judicial, regulatory nature of the work of the Planning Regulatory Committee, and the requirements of natural justice, Members are advised to err on the side of caution when considering the matter of interests.~~

~~Dispensations from the Standards Committee are available in limited circumstances, where the existence of prejudicial interests would mean that the political balance principles could not otherwise be complied with.~~

2226. The Decision Itself

~~In accordance with s54A Section 38 of the Town and Country Planning Act 1990, as amended, Planning and Compulsory Purchase Act 2004 a planning application made under the Planning Acts shall be determined in accordance with the Development Plan unless material considerations indicate otherwise.~~

~~Material considerations are anything that relates to the use and the development of land. "Material considerations must be genuine planning considerations, i.e. they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest." PPG1 para. 50. 'In the public interest' does not mean determining planning applications on the view of the local residents. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated" para. 60 of PPG1.~~

~~If there is public opinion against an application then Members must ask themselves "are the objections based on planning grounds?" and if they are "is there evidence to support them?" If the answer to one or both of these questions is 'no', then Members should not permit the objections to be determine the outcome.~~

~~A Member who is proposing, seconding or supporting a decision contrary to officer recommendations or the development plan should clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. It may be necessary to justify the resulting decision by giving evidence in the event of any challenge.~~

2327.. **Code of Conduct**

This guide is ancillary to the Council's Code of Conduct and is designed to help Members understand their role in the Planning process. Its production is recommended by District Audit ('Probity in Planning').

2428. **Enforcement of the Protocol**

Members need to be aware that this Protocol is for guidance. The breach of its terms will not necessarily result in the decision being invalidated, but may well lead to a decision being challenged.

A breach of the Council's Code of Conduct may lead to a reference to the national Standards Board. A breach of this Protocol which is not a breach of the Council's Code of Conduct Code could not be referred to the Standards Board, but may be investigated by the Monitoring Officer and subsequently reported to the Council's own Standards Committee.

If Members have any concerns about the above pleasethey should contact the Head of Legal Services and/or the Head of Planning Servicesand Building Control.