

Replacement Planning Protocol - amended sections incorporating additions / deletions agreed by the Planning Policy Committee

6. Role of Members

6.1 Members sitting on the Planning Committee should:

- make planning decisions on applications presented to the Committee openly, impartially, with sound judgement and for sound planning reasons;
- consider only development plan policies, [supplementary planning documents](#) and material planning considerations (including the National Planning Policy Framework or NPPF) in determining applications
- exercise their responsibilities with regard to the interests of the District as a whole rather than with regard to their particular Ward's interest and issues;
- come to meetings with an open mind;
- not allow anyone (except Officers, other Committee Members and public speakers when they are addressing the Committee) to communicate with them during the meeting (orally or in writing) as this may give the appearance of bias. For the same reason, it is best to avoid such contact immediately before the meeting starts;
- consider the advice that planning, legal or other Officers give the Committee in respect of the recommendation or any proposed amendment to it. Members need to consider "significant" planning considerations in the determination of a planning application having regard to what the Planning Officer's report states is a significant consideration and be prepared to justify their view if different before the Committee;
- comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires the Local Planning Authority to make decisions in accordance with the development plan unless there are good planning reasons to come to a different decision based on material planning considerations;
- have regard to material planning considerations which can be but are not limited to:
 - Overlooking/loss of privacy
 - Loss of light or overshadowing
 - Right to peaceful enjoyment of property
 - Government policy
 - Previous planning decisions (including appeal decisions)
 - Economic benefits of a proposed development nationally or for the local area
 - Community benefits
- come to their decision only after due consideration of all of the information available to them, including the local information that Members are uniquely placed to access, but always remembering to take decisions on planning grounds alone. If Members feel there is insufficient time to digest new information or that there is insufficient information before them, they should seek an adjournment to address these concerns;

- not vote on a proposal unless they have been present to hear the entire debate, including the Officer update and any public speaking;
- make sure that if they are proposing, seconding or supporting a decision contrary to the Officer's recommendation or the development plan, they clearly identify and understand the planning reasons leading to this conclusion and that they take into account any advice planning, legal or other Officers give them (they should seek such advice before the Committee meeting including resolutions contrary to the Officer's recommendation, reasons for refusal or draft planning conditions). Their reasons must be given prior to the vote and be recorded. Be aware that they may have to justify the resulting decision by giving evidence in the event of challenge;
- avoid requests for Officers to speed up or delay the determination or assessment of particular applications for their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties;
- not allow anyone (except Officers and other Committee Members) to communicate with them during any site visit (orally or in writing).

6.2 Issues such as loss of view, or negative effect on the value of properties, are not material considerations. There is no set list defining material considerations and it is a matter for Members to decide upon in the context of determining a particular planning application having regard to a Planning Officers advice on the matter

13. Referring applications to the Planning Committee

13.1 All Councillors will receive copies of the weekly list of planning applications validated and proceeding to determination, detailing the reference number, proposal, location, decision, number of objections, and a hyperlink to connect to the relevant part of the Planning Portal to enable Planning Committee Members to view more details about the application.

13.2 If a Councillor wishes an application to go before the Planning Committee (to be 'called-in') rather than to be determined through Officer delegation, they should make this request in writing (including by email) to the Planning Officer and copy in the Chief Planning Officer as soon as possible, The planning grounds on which the call-in is based should be stated as fully as possible.

13.3 The Planning Officer and/or Chief Planning Officer shall then mark the record of that application as "Referral to Committee".

13.4 "Call-ins" are of two types:

- i) when a Member would want to have Planning Committee consider the application in the event of an Officer recommendation of refusal because of their awareness of a material consideration that indicates planning permission should be granted; or
- ii) when a Member would want to have Planning Committee consider the application in the event of an officer recommendation of permission because of their awareness of a material consideration that indicates planning permission should be refused.

In either case, if Members consider there may be circumstances in which an alternative Officer delegated decision may be acceptable (e.g. amendments to a scheme of development imposition of planning conditions), they should still make a “call-in” in writing but indicate to the Chief Planning Officer that they may be minded to change their view subject to further discussion once Officers had come to an initial opinion.

- 13.5 Councillors must have reasonable and material planning ground(s) upon which to make the request to reverse an Officer’s indicated recommendation. All Call-ins will be reviewed. Should the Chief Planning Officer find the planning grounds to be insufficient for the reversal of an Officer’s recommendation then the Chief Planning Officer will immediately consult with the Chair, Vice Chair and delegated Planning Officer before presenting in writing to, and subsequently discussing with, the member concerned their [reason\(s\)-recommendation](#) to withdraw their Call-In. The decision for a Call-in rests with the Member but no reasonable and sound request for withdrawal shall be refused.
- 13.6 The agenda for the next appropriate meeting will be amended as soon as possible to reflect those applications that have been ‘called-in’. The Planning Officer will also inform the Member of the date of the Committee when the application will be heard. The Member making the call-in request will be invited to;
- i) discuss the wording of an alternative resolution for permission/refusal with the Case Officer/another Senior Planning Officer to be forwarded to Democratic Services to ensure the smooth running of Planning Committee proceedings; and
 - ii) discuss the wording of an alternative set of planning conditions/ reasons for refusal with the Case Officer/another Senior Planning Officer to ensure these meet the test of reasonableness and to be forwarded to Democratic Services to ensure the smooth running of Planning Committee proceedings.
- 13.7 The Chief Planning Officer has absolute discretion to refer any otherwise delegated application to the Planning Committee for determination, for example, when such an application raises issues considered to be of District wide importance.
- 13.8 Members of the public and other third parties **cannot** request that an application be referred to the Planning Committee.
- 13.9 The number and nature of delegated applications referred to the Planning Committee will be reviewed on a regular basis.

17. Decision making

17.1 Declaration of Interests

- 17.1.1 The Council’s Monitoring Officer has provided all Councillors with detailed guidance on the Member Code of Conduct and in particular, declaration of interests. This is regularly updated. Members of the Planning Committee must ensure they are familiar with the Code. The requirements must be followed scrupulously, and Members should review their situation regularly. It is the personal responsibility of individual Members to ensure they comply with the Code of Conduct and make all appropriate declarations at Planning Committee meetings. Members should take advice early, from the Monitoring Officer or the Deputy Monitoring Officer, and preferably well before any meeting takes place, if they are in any doubt as to their position.

17.1.2 The Member Code of Conduct sets out detailed requirements for the registration and disclosure of disclosable pecuniary interests. Members should not participate in any decision and should leave the meeting where they have a disclosable pecuniary interest unless they have first obtained a dispensation. In addition, unless they have obtained a dispensation, they should:-

- NOT participate or give the appearance of trying to participate in the making of any decision on the matter by the Council
- NOT get involved in the processing of the application
- NOT use their position to discuss the proposal with Officers or Members when other members of the public would not have the opportunity to do so or in any other way seek or accept any preferential treatment or give the appearance of so doing.

17.1.3 The Member Code of Conduct requires Members to consider whether they have a non-registrable interest or personal interest in any item. Such an interest will arise where the matter may reasonably be regarded as affecting the wellbeing or financial standing of the Member concerned, a member of their family or a person with whom they have a close association to a greater extent than many of the constituents of the ward affected by the application at Planning Committee. Such an interest will also arise where it would be a disclosable pecuniary interest but relates to a member of their family or to a close associate rather than to the Member themselves or to their spouse or partner.

17.1.4 In the event that a Member considers that they have a non-registrable pecuniary interest or personal interest in any matter they should disclose the existence and nature of the interest as requested by the Chair during the course of the meeting but, in any case, no later than the hearing of the specific item to which an interest relates.

17.1.5 A Member who has a personal interest in a planning application must also consider whether that interest also constitutes a prejudicial interest. The test of this is whether it would be reasonable for a member of the public with knowledge of all the relevant facts to consider that the nature of the Member's interest was likely to affect their judgement of the public interest - i.e. affect or influence their voting intentions.

17.1.6 If a Member only has a personal interest to declare, which they do not consider to be prejudicial, they are entitled to remain in the meeting and speak and vote.

17.1.7 If a Member decides that their personal interest is a prejudicial interest, they must declare that fact in the usual way. They should leave the meeting for the discussion regarding that item unless exercising their public speaking rights, after which they should then leave the meeting for the remainder of the consideration of the item.

17.1.8 A Member with a disclosable pecuniary interest should, subject to any dispensation, leave the meeting for the discussion regarding that item and not participate in the matter. If there is any doubt, further advice for Members is available in advance of the meeting from Legal Services.

17.1.9 The obligation to disclose the existence and nature of an interest applies to **all Councillors attending the Planning Committee meeting, whether sitting as a Member of the Planning Committee or as a Councillor addressing the Planning Committee or sitting in the public gallery**. The responsibility rests with individual Councillors to ensure they indicate to the Chair that they have an interest to declare.

17.1.10 Members should carefully consider whether they have a disclosable interest if they have participated in a Parish Council meeting or a County Council committee with respect to a particular planning application.

17.2 Predisposition, predetermination or bias

17.2.1 To preserve the integrity of Planning Committee decisions, it is vital that Members do not make up their minds before they have all relevant materials and arguments before them at the Committee meeting. Members must retain an open mind at the time the decision is made and not make up their minds or appear to have made up their minds, until they have heard the Officer's presentation and evidence at the Planning Committee when the matter is considered. This is particularly important if a Member is contacted by an external interest or lobby group. If a Member has made up their mind prior to the meeting and is not able to reconsider their previously held view, they will not be able to participate in the determination of the matter because if they did take part in the discussion or vote it would put the Council at risk in a number of ways. Firstly, it would probably, in the view of the Local Government Ombudsman, constitute maladministration. Secondly, the Council could be at risk of legal proceedings on a number of possible grounds, e.g.

- that there was a danger of bias on the part of the Member; and/or
- predetermination; and/or
- failure to take into account all of the factors which would enable the proposal to be considered on its merits

17.2.2 Members are entitled to feel predisposed towards a particular decision but must still be able to consider and weigh relevant factors before reaching their final decision. Predetermination arises when Members' minds are closed, or reasonably perceived to be closed, to the consideration and evaluation of the relevant factors. This risks making the whole decision vulnerable to legal challenge. Section 25 of the Localism Act 2011 provides that a Member 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. For example, a Member who states "*wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before committee*" has a closed mind. A Member who states "*many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area*" does not have a closed mind although they are predisposed towards opposing such applications.

17.2.3 Where a Member may have campaigned for or against a proposal, they need to be careful to consider and ensure it is apparent that they have considered all relevant considerations and made their decision in accordance with their statutory duty. Members must be prepared to change their view right up to the point of making the decision. Members can listen to applicants and objectors, and indicate their view, but must not be biased in their consideration of the issues. Members can support or oppose an application and represent the views of their constituents in their role as a Ward Councillor. To do so as a Planning Committee Member MIGHT compromise their role on the Committee and Members are advised to seek advice from the Monitoring Officer or Deputy Monitoring Officer.

17.2.4 The fact that Members may have campaigned [for or](#) against a proposal will not be taken as proof that they are not open-minded. However, a Member who has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind. [Members of the Planning Committee who have actively engaged with lobby groups on a live planning application will need to seek advice from the Monitoring Officer regarding any perceived pre-determination.](#)

17.2.5 Pre-determination does not arise where Members have not expressed a concluded view on a planning application but consider they are still approaching the determination of that application with an open mind.

17.2.6 Members on the Planning Committee who also serve on bodies (such as Parish ~~or County~~ Councils) that are consulted about planning applications need to think carefully about their participation in that consultation process to avoid the impression that they have already made their minds up before the matter arrives at the Planning Committee. Members will be familiar with the fact that, when they receive the consultation on a particular matter, they only receive the proposal and not the full Officer report. It is at the point when the Officer report is submitted to Members that all material considerations are before them. A firm decision before that point is as stated above therefore premature in terms of planning law. This does not prevent a Member from listening to a debate at a Parish ~~or County~~ Council, so long as the Member does not take part in the debate or express a view during the debate or openly afterwards.

17.2.7 Where a Parish Council ~~or County Council~~ has a Planning Committee, District Planning Committee Members should avoid joining that Committee. Councillors may also well consider whether it would be preferable to leave the room or simply listen to debate in the Parish ~~or County~~ Council but express no view during the debate or openly afterwards until the matter comes before the District Planning Committee. Members should be aware of, and have regard to, guidance issued from time to time by the Planning Advisory Service in relation to this issue.

[17.2.8 Planning Committee Members should confirm whether they have, in Parish or other formal planning situations, considered, evaluated or discussed any planning application that is before the Committee for consideration. In such circumstances, the Member should leave the room while that planning application is being heard.](#)

18. Public Speaking on planning applications

- 18.1 The Council operates a system of limited public speaking at Planning Committee, to allow Members to hear representations from several interested parties before the application is considered. Representations are limited to 3 minutes per speaker, with 3 speakers allowed, i.e. one in favour (e.g. an applicant, agent or supporter); one objector; and the Parish Council. They are taken in the order of objectors and then applicant and/or supporters. No individual will be allowed to speak in more than one capacity and as set out above; Members of the Committee should not assume one of these roles.
- 18.2 Each speaker must pre-register with Democratic Services no later than 16.30 on the day before the Planning Committee, with registration opening on the publication of the agenda. Details of how to register to speak will be provided to the applicant and third parties who have made representations on the proposal on the publication of the agenda, [including within emails generated to affected parties in advance of the meeting](#). Speakers are registered on a 'first come first served' basis, that is to say the first speakers to register will be successful. Ward and Parish councillors are expected to adhere to the identified timeframes, and any exceptional circumstances that mean that this has not been possible may be considered by the Chair.
- 18.3 There shall be no transfer of time between registered individuals, or to others not registered, except in exceptional circumstances and with the prior approval of the Chair.
- 18.4 Speakers should arrive for the Planning Committee no later than 15 minutes before the start of the Committee. A speaker arriving after the start of the meeting will not be recorded as present and may not be eligible to speak. Changes to the order of the agenda may be made at the Planning Committee and at the discretion of the Chair.
- 18.5 Exceptionally, the Chair may decide during the meeting to increase the time available, for example if an application straddles a parish boundary or if a large number of people wish to speak. In such cases the time will be increased equally for each of the groups.
- 18.6 Messages [in any form](#), should never be passed to individual Committee Members, either from other Councillors or from the public. This could be seen as seeking to influence that Member improperly and will create a perception of bias that will be difficult to overcome.

32. Ward Councillors addressing the Planning Committee

- 32.1 If a Ward Councillor wishes to address the Planning Committee about a matter in their ward being considered at the Planning Committee, they should advise the Chair (or Vice Chair in his/her absence) and the Committee Clerk prior to the meeting itself and will be entitled to speak after the [objector and applicant public speakers](#) have addressed the Planning Committee [and partake in the debate as appropriate but not vote](#). Ward Councillors should comply with the procedure for declaration of interests if they speak at a Planning Committee meeting in the same way as Members of the Committee. Where the Ward Councillor has a prejudicial interest, they may only address the Planning Committee if they are the applicant or lead objector and must withdraw from the room (or virtual meeting where appropriate) once they have made their representations.