



TO COUNCILLOR:

G S Atwal
L A Bentley (Chair)
G A Boulter
Mrs L M Broadley (Vice-Chair)
F S Broadley

D M Carter
B Dave
R E Fahey
D A Gamble
J Kaufman

Dr T K Khong
Mrs H E Loydall
R E R Morris

Dear Councillor

I hereby **SUMMON** you to attend a **MEMBERS' TRAINING SESSION** of the **DEVELOPMENT CONTROL COMMITTEE** to be held at the **COUNCIL CHAMBER, COUNCIL OFFICES, STATION ROAD, WIGSTON, LEICESTERSHIRE, LE18 2DR** on **THURSDAY, 25 MAY 2017** at **7.00 PM** for training on the subject matters as set out below.

Yours faithfully

Council Offices
Wigston
18 May 2017

Mark Hall
Chief Executive

In accordance with the Constitution of the Council, Members are STRICTLY ADVISED that their attendance is MANDATORY. No Member may sit on the Development Control Committee until he or she has undergone basic training on the law and procedure relating to the functions of the Committee.

ITEM NO. **TRAINING** **PAGE NO'S**

1. Training of Members of the Development Control Committee **1 - 93**

The Planning Control Team Leader, Mr Richard Redford, and the Senior Planning Control Officer, Mr Tony Boswell, shall jointly-deliver a programme of training to Members of the Development Control Committee.

The purpose of this session is to provide new Members with, and to consolidate existing Members', general knowledge-base, skill-set and experiences so to enable the Committee as a whole to discharge its responsibilities as a Planning Authority.

The opportunity to ask questions throughout the session shall be afforded to Members. All the training documentation to be referred to is attached hereto.



For more information, please contact:

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MEMBERS ONLY

Planning and Decision Making

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Agenda Item 1



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Planning Advisory Service

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“The Planning Advisory Service (PAS) is part of the Local Government Association. The purpose of PAS is to **support local planning authorities to provide effective and efficient planning services, to drive improvement in those services and to respond to and deliver changes in the planning system**”

(Grant offer letter for 2013-14)



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Overview of planning decision making

- What is planning for?
- The decision making context
 - Policy
 - Material considerations
- Performance and implications for committees

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Planning creates headlines

Heavy-handed council workers order couple to apply for planning permission... for their daughter's Wendy house

By DAILY MAIL REPORTER

Planning reforms: developers 'will wreck countryside'

The leaders of the two biggest countryside campaigns are warning that planning reforms coming into force will "wreck the countryside" and leave large parts of England at their most vulnerable to builders for 70 years.

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Councillor sorry for planning error

Written by CHRIS HAVERGAL

A top councillor has apologised for breaking planning rules after a bike shed was installed without permission outside her home.

No planning application was submitted before the 12ft-wide wooden shed was built outside the Bulstrode Gardens home of Cllr Lucy Nethsingha, who represents Newnham on Cambridgeshire County Council



Planners must be barmy



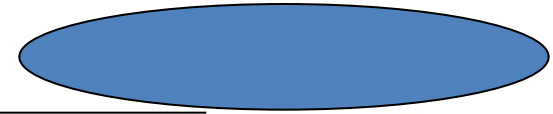
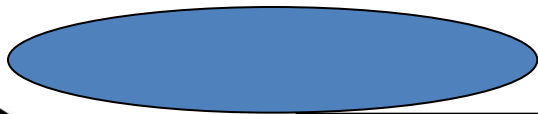
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The decision maker's balancing act

economic recovery
meeting housing needs
long term strategies
brownfield development
Affordable housing
individual interest

climate change
environmental issues
short term impacts
localism
pressure on infrastructure
viability
public interest



Planning...

- sets out a long term vision for places
- provides a decision making framework to manage competing uses for space;
- **balances** economic, social and environmental needs.
- provides **legitimacy** through consultation and testing of evidence;
- **delivers** change on the ground

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The challenge for councils: more



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The challenge for councils: less

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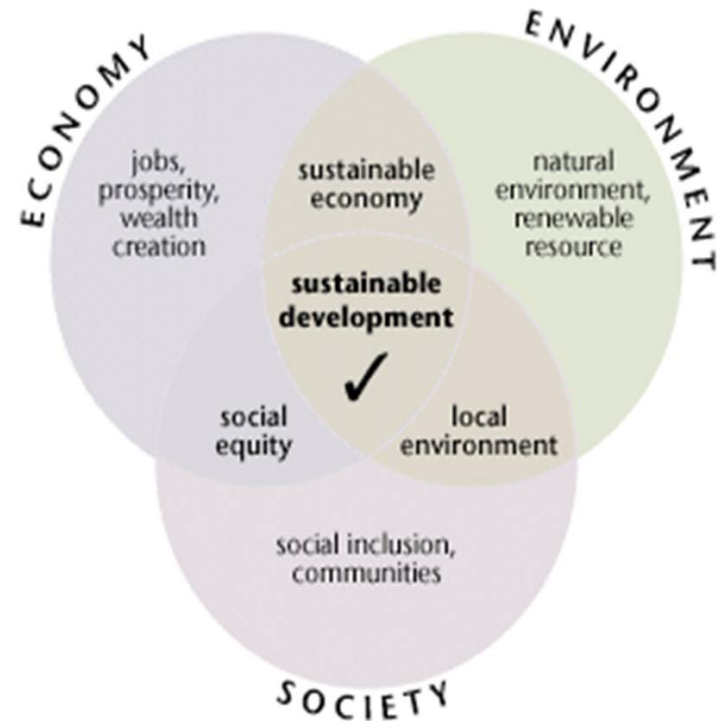


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Planning in the UK is policy-led

- national policy
 - National Planning Policy Framework (NPPF)
 - G&T policy
 - National Policy Statements
 - National Planning Policy Guidance (NPPG)
- local policy
 - development plan
- neighbourhood policies
 - Neighbourhood plans



NPPF and decision making

- Local planning authorities should:
 - **approve development proposals** that accord with statutory plans without delay; and
 - **grant permission** where the plan is absent, silent, indeterminate or where relevant policies are out of date.....
 - *unless....adverse impacts of allowing development would **significantly and demonstrably** outweigh the benefits, when assessed against the policies in the Framework taken as a whole*

The job of the Committee



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Start with the plan

- “.....have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.

Town and Country Planning Act 1990, section 70



What is the development plan?

- [Local Plans](#): development plan documents adopted by local planning authorities, including any 'saved' policies from plans that are otherwise no longer current, and those development plan documents that deal specifically with minerals and waste.
- [Neighbourhood plans](#): where these have been supported by the local community at referendum and subsequently made by the local planning authority.
- In London only, the [London Plan](#): the spatial development strategy prepared by the Mayor of London.
- Any 'saved policies' from the former Regional Strategies, until such time as these are replaced by Local Plan policies.

Policy

- the first consideration must be the Development Plan– as it is **at the time of the decision**
- **emerging** plans: no legal force until adopted, but can be given more weight the more advanced they are
- if the Development Plan can be shown to be **out of date** (or, indeed, “silent” on a particular point), NPPF is main policy framework

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Think about other things

- *.....determination must be made in accordance with the plan, unless material considerations indicate otherwise”.*

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Section 38, Planning & Compulsory Purchase Act 2004



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Material Considerations

- what they are and are not - decided by statements of national policy or by decisions of the courts
- the **weight** that should be attached to each consideration in any particular case is for the decision maker

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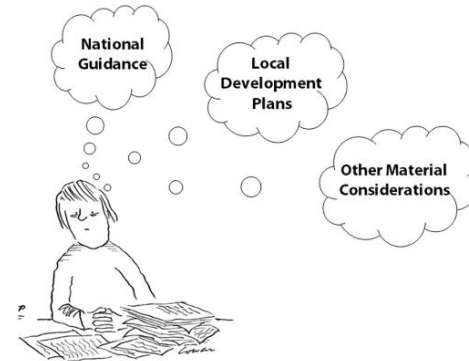
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The main types of material consideration

- National and local policy
- Relevant views of consultees
- Factors on the ground

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www.planningaidforlondon.org.uk



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Some factors “on the ground”

material

not material

- design and visual impact
- privacy/daylight/sunlight
- noise, smell, pollution
- access/traffic
- physical infrastructure (eg water)
- health and safety
- ecology, landscape, trees
- crime (and fear of)
- economic impact
- planning history/related decisions
- PD fall-back position
- cumulative impact
- viability

- the applicant
- land ownership
- private rights (e.g. access)
- restrictive covenants
- property value
- competition
- loss of view
- “moral” issues
- “better” site or use*
- change from previous scheme
- Building Regs/other regs

* N.B “need” is material in some circumstances

Materiality: some recent refinements

- “local finance considerations”
- viability of the development
- Assets of Community Value
- healthy eating policies*
- fear of crime*

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* *needed the intervention of the Courts*



Deregulation: getting applications out of the system

- Extension of Permitted Development Rights (pp not required)
 - Residential extensions
 - Offices to residential
 - the conversion of agricultural buildings to residential use ('barn conversions')
 - Shops, banks etc to residential

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The performance ‘sticks’

- Planning guarantee: fees to be returned if no decision after 26 weeks (unless extension agreed)
- Designation: major applications can be dealt with by PINS where LPA shows “consistently poor performance in speed or quality of decisions”
- Or where a high proportion of decisions on majors are allowed on appeal

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This all has implications for your timetable and deferrals



Managing Public Expectations



Planning as a democratic process

- Representative democracy is the bedrock of planning
- Increasing calls for participative democracy

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Planning as a democratic process

- Councillors have 2 roles:
 - Ward councillors: community leaders
 - Committee:
 - decisions in accordance with plan & other considerations.
 - represent the interests of the whole community
- Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.

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Localism and planning decisions

“It cannot be that a strategic facility to provide for the needs of a very wide area can be decided solely on the basis that the local community do not wish it to be located within their area..... If applied widely, this could hold up economic recovery as well as deprive future generations of important developments and facilities.”

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“There is nothing which indicates that.... a particular, and in this instance, very localised group of residents should be able to prevent planning permission being granted simply because they do not want it.”



Public Representations

- are background papers and public documents
- should be included with the agenda or at least summarised in a consistent way.
- be reported to the meeting should they be received after the agenda has gone out (with a cut off period)

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SAVE WANSTEAD FLATS
Ux Community Neighbourhood Unit, Quing Hill, Eastham Green, London E7 9LJ #savewansteadflats.com

**OPPOSE THE PLANS FOR
A POLICE BASE ON WANSTEAD FLATS!**
How to register a planning objection



The Metropolitan Police have finally submitted its deeply flawed planning application to Redbridge council. We can only stop it if hundreds of local people submit objections

Please act NOW to Save Wanstead Flats!

PLEASE DISPLAY THIS FLYER IN YOUR WINDOW

Public speaking

- Publish scheme in their constitution/on website.
- May be local limitations on number of speakers for each 'side'
- Allow an equal amount of time for
 - representations 'for' and 'against' the application

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Planning Information

Speaking at Committee

Speaking at a planning application at a Neighbourhood Committee or the Development Control Committee.

These arrangements allow applicants and objectors equal time to make their points to Councillors.

To be fair, no exceptions can be made. These arrangements also apply to Enforcement cases and Tree Preservation Orders not being discussed as a confidential item under the Access to Information rules.

In these cases the land or property owner, and objectors and supporters will have speaking rights.

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Neighbourhood Planning mechanisms

- **Neighbourhood Development Plans:** Once 'made' (passed examination and referendum) are part of the development plan, and therefore used as a policy framework for the determination of planning applications
- **Assets of Community Value** – can be a material consideration eg Kensal Rise Library

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Neighbourhood Planning mechanisms

- **Community Right to Build:** Whilst maintaining the principle of the green belt, communities will be able to develop land subject to doing the work and passing examination and referendum (via an NDO)
- **Neighbourhood Development Orders.** Like Local Development Orders (bestowing PD rights) but made by the Parish/Forum

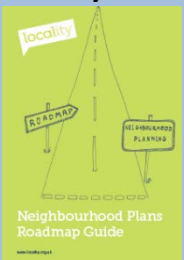
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Neighbourhood Planning Steps

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STEP 1:
Get informed:
mycommunityrights
E.g. Locality 'Road Map'



STEP 2:
Designate
Neighbourhood
Planning Area + Forum




STEP 3:
Consultation and
community
engagement




6 weeks

6 weeks

STEP 4:
Local Authority
publicise the plan



STEP 5:
Examination of plan



STEP 6:
Referendum



STEP 7:
Plan Made!

...



6 weeks



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Motions, Amendments, Decisions and Conditions

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Who makes planning decisions?

- Local Planning Authority: delegated or committee
- Secretary of State (call-ins)
- Appeals – the Planning Inspectorate
- Government – national infrastructure projects
- Greater London Authority
- Development Corporations
- And there is the role of the courts

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Planning decisions – the law

1990 and 2004 Acts

The LPA “may grant planning permission, either unconditionally or subject to such conditions as they think fit, or they may refuse planning permission”.

They “shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.

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Town and Country Planning Act 1990, section 70



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Decisions

- must be ones Committee is empowered to take.
- requirement to give reasons for refusal (for applicant's benefit if appealing)
- by a majority of those present - possible Chair's casting vote dependent on Council's Constitution.

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Motions

- Reports from Planning Officers will have recommendations.
- Committee member 'proposes' a motion (normally officer's recommendation).
- Needs to be seconded (by another member or the meeting)

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Amendments (1)

- After a motion has been seconded then an amendment can be moved.
- Basically proposes a change to a motion
- Sometimes an amendment can be accepted by the proposer (friendly/ altered)
- If amendment is seconded then it is debated ahead of the motion.

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Amendments (2)

- Must be relevant to the original motion.
- Voted upon one at a time, in order they are proposed.
- If lost then debate on original motion continues.
- If carried then the original motion becomes the substantive motion.

Amendments (3)

Amendments can:

- Leave out words
- Leave out words and insert others
- Refer any motion, or issue or part of an issue to
- an appropriate body (If this is moved then no other amendment can be moved).

Amendments cannot:

- Amount to a direct negative of a motion or nullify the motion.

Decision-making: key points for Committee

- the policies in the development plan
- other relevant policy considerations
- the results of technical consultation
- all other views – if material
- on its own merits, and in its particular context
- come to a view in the light of officer assessment and recommendation, and the debate

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Overturns/different decisions

- perfectly acceptable for Councillors come to a decision different to the recommendation
 - **provided that it can be justified on planning grounds, based on the Plan and other material considerations**
- Committee must give justified planning reasons for decision - **it can't be left to officers to work out later**
- but usually the officers are clear from the debate what the Committee's concerns are, and can put the final decision notice together in the appropriate language

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Refusing permission (1)

- are the reasons **lawful** (which includes being generally “reasonable”)?
- could you mount a credible case on appeal? Is there a sufficient “**evidential basis**” for the decision?
- would anyone reading the decision – especially the applicant – readily understand **why** permission has been refused?

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Refusing permission (2)

- are you able to describe the **harm** that would result if the development went ahead? And why conditions would not be sufficient to mitigate that harm?
- is it clear what the **policy support** is for the decision?
- have all the **other material considerations** been given the appropriate weight?

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Approvals

- A planning authority can grant permission unconditionally, or '*subject to such conditions as they see fit*' (and/or a S106 obligation)
- NPPF – use of conditions where can make an otherwise unacceptable development, acceptable
- Courts have determined that certain legal principles
 - Planning purposes only
 - Not be unreasonable/ ultra vires

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Planning Conditions

- NPPF: a condition must satisfy 6 tests:
 - necessary,
 - relevant to planning
 - relevant to the development permitted
 - enforceable
 - precise; and
 - reasonable in all other respects
- Planning Policy Guidance sets out these tests and key considerations
- Circular 11/95 – now rescinded (accept for the model conditions annex)

Planning conditions

- ‘Grampian’ (type) conditions:
 - delayed unless a particular event has occurred
- All planning permissions are subject to time limits (3 years) for implementation, beyond which they lapse
- Approval of details (especially pre-commencement ones) – consultation on a default approval if not dealt with

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Reasons for conditions

- the LPA must “*state clearly and precisely their full reasons for each condition imposed, specifying all policies and proposals in the development plan which are relevant to the decision*”.
- must be as specific as possible – what does “*to safeguard the interests of residential amenity*” or “*to enable the local planning authority to control the development*” actually mean?
- there is a right of appeal against conditions – so explain and justify

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s106 planning obligations

- site-specific to that development
- used where it is not possible to use conditions
- often in mitigation of an impact, or to support provision of infrastructure or affordable housing
- tests: must be necessary, directly relevant, reasonable, fair and related in scale/kind to the development (statutory and policy)
- the use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold

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How do you minute meetings?

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Meeting Started at 10:01am
Meeting Ended at 10:56am
Meeting lasted 55 minutes





Using and discharging conditions – Ten best practice principles

July 2015

About this advice note

This advice note has been written by a group representing interests from across the development sector and local government. It's intended to complement policy and guidance with ten good practice principles. If followed by all stakeholders in the planning process, these principles should help improve the way conditional planning permissions work for everyone. Their goal is to help reduce the uncertainty and cost that can result from over reliance on conditions. They should also ensure that all conditions are better tailored to the purpose and encourage a more streamlined discharge process.

For each principle the reader should consider the action points described and embed these good practices into their work.

Introduction

Local Planning Authorities (LPAs) grant permission for most planning applications and there has been a significant improvement in the speed of determination. However, where it exists, poor practice around conditions on planning permissions impacts on development viability and delays in bringing forward developments. It adds to the costs for LPAs, developers and statutory consultees; and can cause local communities to feel that the process of considering applications is opaque and confusing.

In summary the criticisms are:

- LPAs paying too little attention to the conditions that are applied to planning permissions.
- Too little priority is given to managing the discharge of these conditions by developers, LPAs and consultees.

All sectors involved in planning and development agree that the flexibility offered by conditions, when used well, facilitates development. They enable developers to spread cost and risk by providing information about detailed considerations after the principle of development has been accepted and provide a mechanism for restricting unacceptable aspects of a development rather than refusing the whole proposal.

The policies for the use of conditions are defined in the National Planning Policy Framework (NPPF) para 203 and 206. The 6 tests (para 206) provide a robust and familiar framework against which proposed conditions should be tested. Further practical guidance about the wording of conditions and detail of how and when certain types of conditions can be used is in the government's Planning Practice Guidance (PPG). These should be referred to along with the 10 good practice principles.

The ten principles

Principle 1

The number of conditions imposed through a planning permission should be kept to the minimum necessary to ensure good quality sustainable development.

Planning conditions should comply fully with NPPF's six tests. LPAs need to ensure that all case officers are fully familiar with them and are encouraged to be rigorous in the case of each proposed condition. It's equally the case for the officers of statutory consultees, who may not be planners, but who should nonetheless be familiar with the tests in relation to the conditions they recommend.

In practice, while standard conditions can be a useful aid for consistency and supporting enforceability, there is a danger that not enough thought is given to whether the condition is necessary: i.e. will it be appropriate to refuse planning permission without the requirements imposed by the condition?

The reason for imposing a condition is often not clearly set out in decision letters. A local plan policy does not of itself justify the imposition of a condition. More consideration given to explaining why a condition is needed (rather than relying on a simple reference to a policy number, or generalisation such as to preserve the amenity of the area) will result in conditions honed to specify what is actually required in order to make a development acceptable.

Planning officers should add value by rationalising the conditions requested by various consultees so that the submission of a detail for approval will take account of various requirements for linked aspects of the development e.g. where the EA have ground water contamination concerns and environmental health are concerned about the impact of contamination for human habitation, there will be benefit in a co-ordinated approach to the design solution. The best such solution and clearest conditions will be reached through conversation between the parties about what is required.

Actions for LPAs:

- Be robust in testing your proposed conditions against the 6 tests.
- Use standard conditions as a guide rather than a pick and mix.
- Give better reasons for the conditions you are imposing and relate these to the development.
- Rationalise conditions that relate to similar matters where appropriate.

Actions for statutory consultees:

- Be robust in testing your requested conditions against the 6 tests.
- Explain clearly what the requested condition is designed to achieve in relation to this development
- Be open to rationalising the form of conditions where requirements overlap.

Principle 2

Better detail submitted = fewer conditions.

When a planning submission contains full detail relating to the proposed development, impact analysis and mitigation measures; fewer conditions will be required to ensure the quality of the resultant development. As long as there's sufficient information to allow for the proper consideration of the proposal, there is an element of choice for the applicant about whether some matters of detail are submitted up front (giving more certainty) or after the principal of development is established and conditions imposed (managing the cash flow and timelines in the planning process). Where the submission includes material or notes that are purely illustrative, this needs to be clearly indicated.

LPA's should not impose or statutory consultees request conditions that, in effect, duplicate the information or detail already supplied as part of the application. The PPG advises that a condition requiring resubmission and approval of details that have already been submitted as part of the application is unlikely to pass the test of necessity. It may in some limited circumstances be necessary to require that a particular aspect of a development be completed as part of the development e.g. to ensure that mitigation required as part of a flood risk assessment submitted with the application is carried out.

If information or detail is to be submitted later through approval of detail or reserved matter application, discussing **when** in the delivery programme will avoid compromising the quality of the development.

Actions for applicants:

- Use pre-application discussion to agree your submission material and reserved matters.
- Don't reserve matters where there is not a practical reason for delaying the submission of these details in the planning application.
- Share your prospective development programme with planners so that timing of detail conditions doesn't hold up development.
- Be clear about what material is simply illustrative and what is to be considered within the application.

Actions for LPA's:

- Don't impose a condition that in effect duplicates material in the application submission.
- Publish your list of standard conditions on your website.

Principle 3

Positive dialogue between applicant/planning authority/statutory consultees/community is likely to result in fewer conditions being imposed as issues can be resolved as they arise.

Pre-application discussions and regular conversations about matters to be covered by a condition will help streamline the planning process, and aid transparency about what is being granted permission. Such conversations should take place early and drafts of proposed conditions shared with the applicant as early as is practical, not just when the council officers' report is being drafted. As per the NSIP regime, it could be helpful for clarity if the applicant includes a schedule of expected conditions in an application submission.

In some cases it may not be possible to rely on a condition to provide information needed before planning permission can be granted, such as a flood risk assessment or land contamination issues. Pre-application discussions can help identify information requirements and save time and wasted effort during the application stage.

Decision letters should clarify why a condition is necessary (to make the development acceptable). For additional clarity and transparency, it could also explain, if applicable, that an applicant has requested that this detail be considered later.

When an application is submitted, any omission or ambiguity in the application submission should, wherever possible, be discussed with the agent or applicant and sorted out rather than be left to condition.

If an element of the proposed development shown on the submitted plans is unacceptable and a modification is required to make the proposal acceptable, giving the applicant a chance to amend the application or to delete reference to the problem element can avoid a condition and make the proposal clearer for the community. A condition requiring approval (before the relevant phase of the construction) of a substitute detail can be imposed provided that the amendment does not change the nature of the development sought, and the applicant is able to confirm that the amendment is capable of delivery. Compliance with the plans in other respects can be assured by standard conditions such as that used by PINS.

By the time the officer's report is written up, the applicants should be familiar with all the conditions that are being proposed by the LPA. The cost of making and considering applications to vary conditions or to take enforcement action should a condition be breached, provides another compelling argument for making sure that all parties are up to speed and in agreement about the conditions prior to the determination of the application.

Actions for LPAs:

- Discuss with an applicant where a modification to the application might avoid a condition.
- Give applicants the chance to amend an unacceptable feature rather than impose a condition.
- Encourage applicants to discuss post application timing for the submission of reserved details.
- Share the list of proposed conditions with the applicant as early as possible and certainly before the report is finalised.

Actions for applicants:

- Discuss proposed conditions with the LPA and statutory consultees at the earliest opportunity.
- Respond promptly to modify the application submission if amendment will avoid an approval of detail application later.
- Provide a list of planning conditions that you feel would be appropriate for your proposal.

Principle 4

If a matter is controlled under other regulatory regimes then it should not be the subject of a planning condition.

Planning is not the safety net for controlling all matters pertaining to a development. The second NPPF test requires conditions to be relevant to planning and the PPG warns against conditions that require compliance with other regulatory regimes.

The wide scope of planning considerations leaves the NPPF test fairly open to interpretation. However, where matters are capable of control under other legislation, there is good reason to let the control lie there. Duplicating conditions in planning permissions and other consents can lead to overlap and confusion. Moreover, conditions relating to other regimes are also often tricky to draft in a manner to make them enforceable under planning.

The best mechanism for avoiding confusion or dispute over such conditions is an active discussion with statutory consultees and other relevant agencies including other council services. Applicants are encouraged to have pre-application discussions with other regulators and make parallel applications where possible so that the different regulatory regimes can be 'dovetailed' so far as possible. Many of the statutory consultees offer advice services to help applicants to integrate the various requirements of planning and non-planning consenting regimes.

An informative may be sufficient to draw attention to a requirement under another regime, rather than using a condition requiring details to be submitted.

Actions for third parties, including statutory consultees:

- Do not duplicate requirements where it is possible to control development or regulate use under other regimes or permits.
- Be prepared to participate in an LPA led "development team" discussions to ensure that your requirements can be integrated into proposals alongside the requirements of others.

Actions for LPAs:

- Be prepared to challenge conditions recommended by statutory consultees and other third parties where these relate to matters that can be controlled through other regimes.
- Encourage applicants to 'parallel track' applications for planning permission and other permits and licences
- Use informatives to draw attention to the requirements of other regimes

Actions for applicants:

- Avoid inconsistencies and additional conditions by considering all the relevant development requirements including non-planning consenting regulations when preparing your proposals.
- 'Parallel track' applications for planning permission and other consents and permits wherever possible.

Principle 5

A prescriptive condition setting out what would make the detail of a scheme acceptable is often a better option than an approval of detail condition.

Approval of detail applications create uncertainty and are more costly and time consuming for the applicant, the LPA and statutory consultees. As a general guide, approval of detail applications are a tool more appropriate for major schemes where the complexity and longer design/delivery phases mean that some significant issues will be finalised after the application determination process (see Principle 2).

In many instances it will be practical to say what would constitute an acceptable detail/method and embody this in a prescriptive condition rather than using an approval of details condition to ask for a drawing or a specification to be submitted.

Often it is possible to refer to an accepted standard to be achieved or a methodology: e.g. for tree protection there is a relevant British Standard BS 5837:2012. For design details it may be possible to refer to a design code for an area to describe an acceptable approach or material. This approach can both save time and make the expectation clear to all. It can also provide a degree of flexibility for the developer where, for example, a pallet of materials would be acceptable rather than a single brick or roofing material.

Actions for LPAs:

- Consider using prescriptive conditions in preference to approval of details conditions where what is required can be specified.
- Design standard conditions that refer to locally acceptable design approaches or national standards where appropriate.

Actions for third parties and statutory consultees:

- Consider whether it is possible to formulate standard format conditions that specify appropriate standards to be achieved in order to meet a given requirement.

Actions for applicants:

- Let the LPA and others know what you consider would be possible or practical to specify in a given situation

Principle 6

Consider the impact of a condition on deliverability: inappropriate timing or lack of clarity about phasing can increase risk and cost.

It is clear in the PPG that consideration must be given to the impact of a condition on the deliverability of a development. Conditions that require the submission and approval of details prior to commencement of some aspect of a development should take account of the development process and such conditions should be discussed with the applicant. The DMPO 2015 now specifically requires reasons to be given for using pre-commencement conditions.

Equally, although not required by legislation, it is good practice for the LPA to ensure that all such conditions precedent are grouped on the decision notice, and that the conditions themselves make absolutely clear which conditions relate to which phase of a multi-stage development and which to the development as a whole. Similarly, in the case of hybrid applications seeking detailed permission

for development on one part of a site and outline permission for another part of the same site, grouping the conditions into those that apply to each and those that apply across the site and/or to all phases of development will give greater clarity.

Actions for LPAs and statutory consultees:

- Fine tune your requirements for submission of details to take account of development and construction sequencing.
- Group conditions on the decision notice to make clear which conditions relate to which phase or part of the development and which relate to the development as a whole.
- Use the reasons for a condition to also explain the timing for submission of details.

Actions for applicants:

- Share the development project planning with the LPA and other parties if timing of conditions will affect deliverability.

Principle 7

Wherever practical, frame a requirement as a condition rather than require a planning obligation.

It is vital that all parties do their utmost to ensure that the process of considering a planning application should take no longer than is necessary. Where it's required that something is in place in order to make a development acceptable, all parties should take an active role in ensuring that the means of resolution is clearly agreed before determination. Resolving an issue by using a condition to secure acceptable development avoids the potential for delay in completing a planning obligation.

But where a planning obligation is required, **all** parties should follow the planning guidance and work to finalise the obligation in a timely manner. Thus both applicants and councils should strive to complete the S106 agreement within the government's 13 week target or any agreed extension date.

A condition requiring completion of the S106 agreement before development commences will not be appropriate in the majority of cases. However, in exceptional circumstances, for example if completion of the S106 agreement for complex strategic development is not immediately possible but there is clear evidence that a lack of a planning permission would risk deliverability of the development, such a condition could be considered if it is negatively worded. Clearly in such cases use of the condition should be agreed between the council and the applicant. Transparent decision making will require the terms of the S106 to be clear when the application is determined, albeit that the agreement has not yet been completed.

Actions for LPAs:

- Use a condition to secure a requirement in preference to a planning obligation to save time and cost.
- Use every effort to enable the S106 agreement to be completed expeditiously.
- If such a condition is used ensure clarity about the terms prior to determination and discuss the condition with the applicant.

Actions for applicants:

- Use every effort to enable the S106 agreement to be completed expeditiously.

- Be clear about what is deliverable in your discussion of planning obligations prior to determination of your application.
- Work towards completion of a S106 agreement within the government's targets or the alternative date you have agreed with the LPA.

Principle 8

Informatives are put on a decision notice as guidance for the developer. They are not conditions and are not enforceable, but do provide an insight.

Informatives are the additional comments from the local authority, usually listed at the end of planning permissions. They don't form part of the planning permission, but are used as a useful means for providing guidance to the developer (who may not in the end be the applicant) about other requirements of the council and third parties, such as statutory consultees.

Confusion arises when informatives are used to set out additional detail as to what is required in order to satisfy a condition or make a development acceptable in planning terms. If a particular detail or treatment is necessary in order to make a development acceptable, then that information should be conveyed in the condition, otherwise it is not enforceable. But in a situation where there is more than one potentially acceptable option, an informative can give advice about what would not be acceptable e.g. brick or stone is acceptable but render is not.

Informatives may be useful as a means of raising awareness of the developer about other regulatory requirements but these are essentially advisory rather than regulatory.

Actions for LPAs:

- Don't use informatives to set out mandatory requirements.
- Do use them when signposting to requirements of other regulations or to permit as they will help a developer to step through the development process.

Actions for applicants:

- Heed the signposts and advice contained in informatives in order to save time and cost

Principle 9

Adopt a robust systematic approach to discharging conditions and seeking approval of details applications and consider using a PPA to agree project management milestones and resources.

A wide range of practices for registering and recording the discharge of conditions applications exists in LPAs. Often this needs to be tightened up as a first step to better management of this part of an LPA's workload. The deemed consent for conditions provisions of the DMPO 2105 will provide a backstop date to encourage LPAs to give greater priority to discharge of conditions applications generally. But, for larger applications, it is much more effective for all parties to agree a sensible timescale for their consideration; taking into account the complexity of the details requested and the need to consult with other experts. Where the applicant and the LPA have agreed an alternative date in writing, the deemed discharge consent provisions in the DMPO 2015 do not apply.

In dealing with complex developments where (despite good practice) there are still a number of conditions on the permission, all stakeholders stand to gain from agreeing a programme for the submission, consideration and approval of conditions.

Agreeing a PPA to cover the discharge of conditions is a positive step to project planning this stage as it provides clear agreed milestones and a mechanism to input the necessary resources to deal with the applications more expeditiously. Where a PPA already exists this could be extended to cover the approval of details phase. Otherwise a new PPA could be agreed. Other parties such as statutory consultees should be offered a chance to input into such discussions.

Actions for LPAs:

- Have clear processes to register and track applications for discharge/approval of conditions.
- Encourage PPAs to cover the post application phase as well as management of the application process.
- Encourage pre-submission discussion of details required by condition in order to iron out any potential issues.

Actions for applicants:

- Support a clearer approach to discharge of conditions by making separate applications for the discharge of conditions/approval of details relating to similar matters.
- Discuss with the LPA the likely timing for submission of details pursuant to conditions.
- Participate in pre-submission discussions including with statutory consultees where the conditions relate to their area of expertise.

Actions for statutory consultees and other third parties:

- Give appropriate priority to expediting the discharge of conditions and approval of details, particularly when the condition has been imposed at your request and requires your expertise to assess the detailed submission.

Principle 10

If an approval of detail application involves consulting with the community/parish/neighbourhood planning forum, this should be flagged and explained in the reason for the condition.

It has been unusual to consult with the community over the approval of details which have been required by a condition, but in light of the increasing numbers of communities that are engaged in neighbourhood planning, it is probable that this will increase. Whether it is necessary to consult on approval of details applications will be a matter of judgement for the LPA having regard to the circumstances.

For reasons of transparency and good project planning, it would help to have such conditions flagged as such. This will enable an applicant to be proactive and speak with the community when working up proposals in relation to this condition. For their part, the community representatives who are consulted should demonstrate responsiveness to the need for speedy consideration of submissions.

Actions for LPAs:

- Consider whether third parties, especially neighbourhood planning groups, should have an ongoing engagement role in the approval of details applications

- Flag with the applicant instances where community involvement will be desirable so the applicant is advised that pre-submission engagement is appropriate and can allow time for this.

Actions for applicants:

- Be proactive and engage with the community when working up proposals in relation to conditions.
- Be sure that you give enough time in your schedule to allow communities to engage with your proposals.

Actions for communities:

- Take a positive role in discussions with applicants regarding submissions required by conditions and provide timely responses when the details are submitted.

Probity in planning

for councillors and officers



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This publication was prepared by Trevor Roberts Associates for the Planning Advisory Service. It also includes contributions from officers from various councils.

April 2013

Foreword

This 2013 update to the 2009 version of the Local Government Association's Probity in Planning guide reflects changes introduced by the Localism Act 2011. It clarifies how councillors can get involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

This guide has been written for officers and councillors involved in planning. Councillors should also be familiar with their own codes of conduct and guidance.

This guide is not intended to nor does it constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity.

Introduction

Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.

The planning system works best when officers and councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.

Planning decisions involve balancing many competing interests. In doing this, decision makers need an ethos of decision-making in the wider public interest on what can be controversial proposals.

It is recommended that councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

Background

In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today's place-shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.

This guidance is intended to reinforce councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges.

Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.

Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.

One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved.

Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.

The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

This guidance is not intended to be prescriptive. Local circumstances may provide reasons for local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

This guidance refers mainly to the actions of a local authority planning committee as the principal decision-making forum on planning matters. It is recognised, however, that authorities have a range of forms of decision-making: officer delegations; area committees; planning boards, and full council.

This guidance applies equally to these alternative forms of decision-making. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local plans and other policy documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in planning enforcement cases or the making of compulsory purchase orders.

The general role and conduct of councillors and officers

Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.

Both councillors and officers are guided by codes of conduct. The 2011 Act sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. All councils had to adopt a local code by August 2012.

The adopted code should be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

It should embrace the standards central to the preservation of an ethical approach to council business, including the need to register and disclose interests, as well as appropriate relationships with other councillors, staff, and the public. Many local authorities have adopted their own, separate codes relating specifically to planning although these should be cross referenced with the substantive code of conduct for the council.

Staff who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. Many authorities will have adopted a code of conduct for employees and incorporated those or equivalent rules of conduct into the contracts of employment of employees.

In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. Any councillor or officer receiving any such offers over and above an agreed nominal value should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined. Guidance on these issues for both councillors and officers should be included in the local code of conduct

Employees must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

Officers and serving councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Ombudsman on grounds of maladministration or a breach of the authority's code.

Finally, as planning can sometimes appear to be complex and as there are currently many changes in planning taking place, the LGA endorses the good practice of many councils which ensures that their councillors receive training on planning when first appointed to the planning committee or local plan steering group, and regularly thereafter. The Planning Advisory Service (PAS) can provide training to councillors (contact pas@local.gov.uk).

Registration and disclosure of interests

Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

For full guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013. (This guidance note does not seek to replicate the detailed information contained within the DCLG note). Advice should always be sought from the council's monitoring officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

The provisions of the Act seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate.

Each council's code of conduct should establish what interests need to be disclosed. All disclosable interests should be registered and a register maintained by the council's monitoring officer and made available to the public. Councillors should also disclose that interest orally at the committee meeting when it relates to an item under discussion.

A councillor must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the councillor becoming aware of such changes.

A disclosable pecuniary interest relating to an item under discussion requires the withdrawal of the councillor from the committee. In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business.

If a councillor has a (non-pecuniary) personal interest, he or she should disclose that interest, but then may speak and vote on that particular item. This includes being a member of an outside body; mere membership of another body does not constitute an interest requiring such a prohibition.

It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at planning committee he or she should raise this with their monitoring officer as soon as possible.

See Appendix for a flowchart of how councillors' interests should be handled.

Predisposition, predetermination, or bias

Members of a planning committee, Local Plan steering group (or full Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is alright, the former is not and may result in a Court quashing such planning decisions.

Section 25 of the Act also provides that a councillor 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.

This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased.

For example, a councillor who states "Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."

If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter.

This would apply to any member of the planning committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward). If the Council rules allow substitutes to the meeting, this could be an appropriate option.

Authorities will usually have a cabinet/ executive member responsible for development and planning. This councillor is able to be a member of the planning committee. Leading members of a local authority, who have participated in the development of planning policies and proposals, need not and should not, on that ground and in the interests of the good conduct of business, normally exclude themselves from decision making committees.

Development proposals submitted by councillors and officers, and council development

Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals.

Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local planning protocol or code of good practice should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration
- a system should be devised to identify and manage such proposals
- the council's monitoring officer should be informed of such proposals
- such proposals should be reported to the planning committee and not dealt with by officers under delegated powers.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as applicant, should also not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers.

Lobbying of and by councillors

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

As noted earlier in this guidance note, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments.

In such situations, they could restrict themselves to giving advice about the process and what can and can't be taken into account.

Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at committee.

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority's code of conduct for planning matters.

It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.

A local code on planning should also address the following more specific issues about lobbying:

- Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- Planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors.
- Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
- Call-in procedures, whereby councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern.

As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

Pre-application discussions

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. Now, through the Localism Act and previously the Audit Commission, the LGA and PAS recognise that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and helps to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' approach.

The Localism Act, particularly S25, by endorsing this approach, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken. In addition to any specific local circumstances, guidelines should include the following:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice should be given by officers based upon the development plan and material planning considerations.
- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.

- Confirmation that a written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines would apply. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Authorities should think about when, however, discussions should be registered and notes written.

Authorities have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken)
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

The Statement of Community Involvement will set out the council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

Officer reports to committee

As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.

- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

New documents should not be circulated to the committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This should be made clear to those who intend to speak.

Messages 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.

Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- if a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting
- recording the detailed reasons as part of the mover's motion
- adjourning for a few minutes for those reasons to be discussed and then agreed by the committee
- where there is concern about the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.

The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

Committee site visits

National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply.
- keep a record of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing or
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters.

This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

Annual review of decisions

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.

Complaints and record keeping

All councils should have a complaints procedure which may apply to all council activities. A council should also consider how planning-related complaints will be handled, in relation to the code of conduct adopted by the authority.

So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

List of references

Probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters
Local Government Association, May 2009
http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3378249/PUBLICATION-TEMPLATE

The Localism Act 2011
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

National Planning Policy Framework
Department for Communities and Local Government, March 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60777/2116950.pdf

Committee on Standards in Public Life (1997) Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report Cm 3702-1:
<http://www.public-standards.gov.uk/our-work/inquiries/previous-reports/third-report-standards-of-conduct-of-local-government-in-england-scotland-and-wales/>

Royal Town Planning Institute Code of Professional Conduct:
<http://www.rtpi.org.uk/membership/professional-standards/>

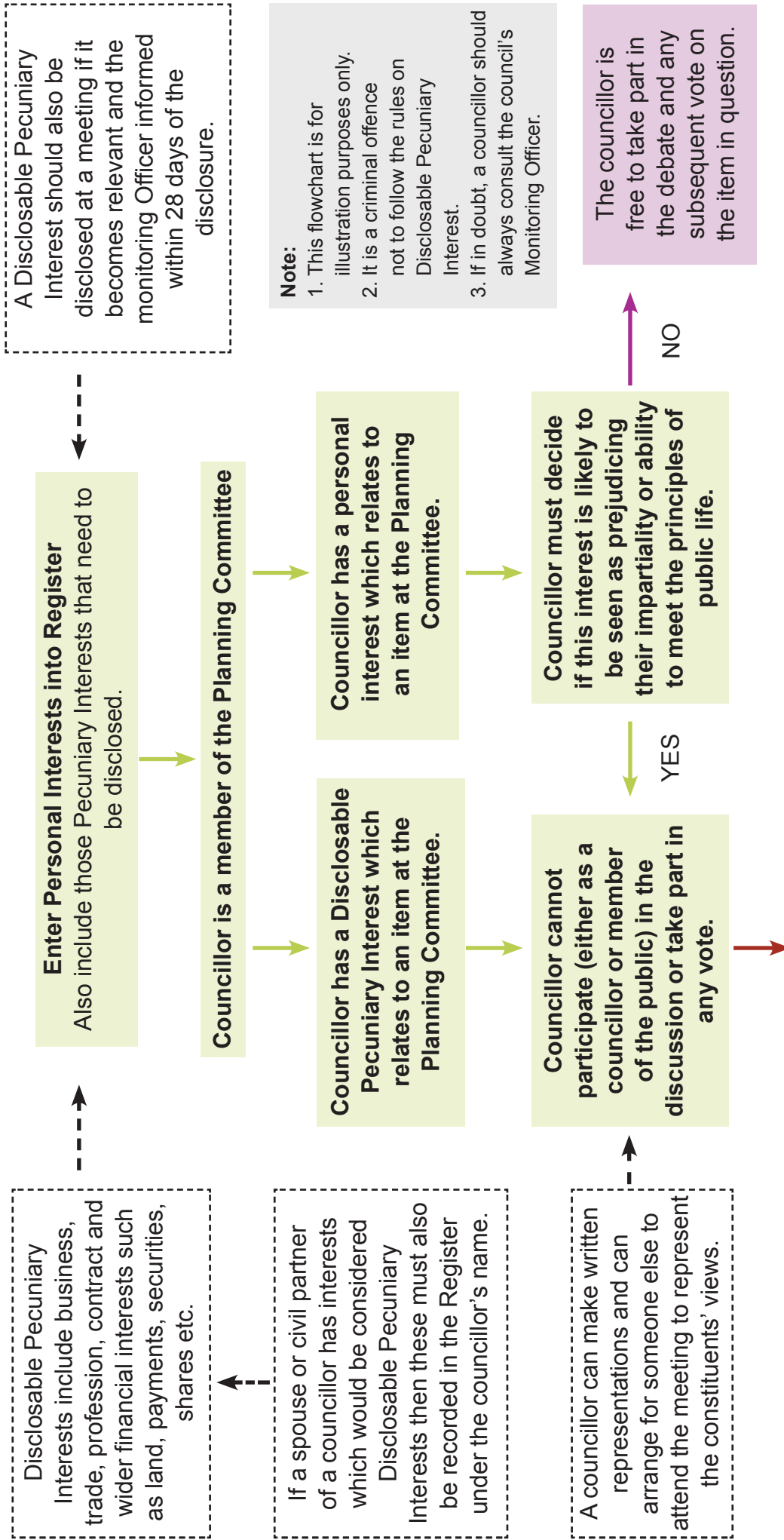
The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

Openness and transparency on personal interests: guidance for councillors,
Department for Communities and Local Government, March 2013
<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>

The Planning System – matching expectations to capacity
Audit Commission, February 2006
http://archive.audit-commission.gov.uk/auditcommission/sitecollectiondocuments/AuditCommissionReports/NationalStudies/Planning_FINAL.pdf

‘Standards Matter’ Kelly Committee Jan 2013
<http://www.official-documents.gov.uk/document/cm85/8519/8519.pdf>

Flowchart of councillors' interests



Notes

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We consider requests on an individual basis.

L13-896

Members Interests, Bias and Pre-determination relating to Planning Matters

Fair and Unbiased Decision Making

Members should consider all Planning Matters on their individual merits. They should not, or appear to have come to a firm view on a matter or application before they have taken all the material considerations into account. This applies to a Councillor as an individual and also as a member of a political group.

Planning is often an emotive matter for those involved and it is of utmost important that processes are not only carried out fairly but appear fair to an unbiased observer. This minimises the risk of challenge to the Council as Planning Authority but also to the individual Members from a conduct point of view.

Registering Members Interests

The Localism Act 2011 (Chapter 7) requires that all Members register their pecuniary (financial interests.) The Act also requires that the pecuniary interests of a Member's husband / wife or partner with whom they live as a civil partner are registered too. It is for each Council to determine through their Code of Conduct and Constitution what information, above the national requirements should be registered.

The Council's Monitoring Officer (or in the case of a parish council) the Monitoring Officer of the District or Borough Council must establish and maintain your Council's register of members interests.

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Each Council's Code of Conduct must comply with the Nolan Seven Principles of Public Life. These are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Disclosable Pecuniary Interests

A disclosable pecuniary interest is broadly defined as including:

- Business interests (for example employment, trade, profession, contracts or any company with which a person is associated)
- Wider financial interests (for example trust funds, investments and assets including land and property)

A full list of Disclosable Pecuniary Interests which have to be disclosed are listed below:

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.

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- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.
- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
- • Any tenancy where (to your knowledge) –
- the landlord is your council or authority; and
- the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

If a new disclosable pecuniary interest comes to light, Members have 28 days in which to tell the Monitoring Officer and add it to their register.

If it is a new interest which hasn't yet been registered and is engaged at a meeting when business is being considered at which a Member is present the disclosable pecuniary interest must be declared at the meeting. If it is sensitive.

Notes:



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If a Member has a Disclosable Pecuniary Interest and is present at a meeting of the Council or authority, of its Executive or of any sub-committee, joint committee or joint sub-committee, the member must not:

Participate in any discussion of the business of the meeting, or if they become aware of a disclosable pecuniary during the meeting not participate any further in the discussion

Participate in any vote or further vote taken on the matter at the meeting.

This limit applies to any form of participation including speaking as a member of the public or as an interested councillor.

Disclosing and Vacating the Room

In many authorities, a provision has been included in the Council's Constitution whereby a member with a Disclosable Pecuniary Interest would be required to leave the room during the consideration of the item.

A member should also leave the room if their continued presence is not compatible with the Council's Code of Conduct or the Seven Principles of Public Life.

Dispensations

Members can apply for dispensations which would allow them to continue to take part in the business of the authority even if they have a disclosable pecuniary interest. Requests must be put in writing to the Monitoring Officer for consideration and could relate to matters such as:

- Without a dispensation so great a proportion of the council or authority

Notes:



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would be prohibited from participating in that business as to impede the council or authority's transaction of that business

- The granting of the dispensation is in the interests of people living in the council or authority's area
- Without the dispensation each member of the council's executive would be prohibited from participating in the business

Personal Interests

A definition of a personal interest will be included in an individual Council's Code of Conduct.

Broadly, this links to the principle relating to integrity which says that 'Holders of public office must avoid placing themselves under any obligation to people or organisations that might try to inappropriately influence them in their work.' Therefore any Elected Member considering Council business needs to make sure that they are not taking decisions which will gain financial or other material benefits for themselves, their families or friends. Members must therefore declare and resolve any interests and relationships.

Personal Interest Questions

If a Member is unsure about a relationship with a person and whether they may be classed as a friend they could consider:

- How often do they see this person
- In what circumstances do they meet them? E.g. Friday night drinks in the pub, passing at the school gates dropping off their children.

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- Do they socialise together?
- Are their wider families friends?

Where a Member may consider that he/ she has a relationship with somebody which is so damaged they may consider themselves as 'enemies'. Members will need to consider how this affects their decision making and the perception of others when they review this relationship.

Interests - Prior Thinking

In preparing for a Planning Committee meeting, it is important that when reading the papers Members look for:

- applicant names / addresses
- planning agent details
- objector / supporter details

Members can then consider whether they should continue to sit as a member of the Committee and consider part or all of the business to be transacted. Importantly Members can only be expected to declare interests which are known to them.

Where a Member has a personal interest they can stay and consider the business of a Committee. However, they need to bear in mind how that may be perceived by a fair minded observer and what, if at all it may prejudice the Members view.

Notes:



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Natural Justice

Planning Committee, in its role as a 'quasi judicial' Committee of the Council must act in accordance with the rules of natural justice.

This means they must:

- Act fairly towards the applicant and interested parties
- Appear to be acting fairly towards the application and interested parties
- Approach all matters with an open mind.

Lord Esher, in R v West Vestry of St Pancras (1890) said:

'...they must fairly consider the application and exercise their discretion on it fairly and not take into account any reason for their discretion which is not a legal one. If people who have to exercise a public duty be exercising their discretion take into account matters which the court consider not to be proper for the guidance of their discretion, then in the eyes of the law they have not exercised their discretion.'

Bias

Bias is defined as:

'a particular tendency or inclination, esp. one that prevents impartial consideration of a question; prejudice.'

This means that Members should not be, or demonstrate a perception that they are inclined to approve or reject a planning application on the grounds that they have an outside interest (this could be a person, relationship, prior experience or other interest.)

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This test was outlined in the Porter v Magill (2001) Case where Lord Hope said that:

‘...the question is whether the fair minded and informed observer, having considered the facts would conclude that there was a real possibility that the tribunal was biased.’

Only a member can say whether they are biased or not.

The Democratic Services Officer cannot force a Member to make a judgement about their potential bias. The Democratic Services Officer's role is to provide advice and guidance to the Member and encourage them to fully consider their potential bias. Where there is serious concern about the potential impact on decision making, advice should be sought from the Council's Monitoring Officer.

Where a member makes a declaration in a meeting, it is imperative to prevent legal challenge that the declaration is minuted clearly. The Democratic Service's Officer's role in the meeting is to clarify the declaration being made at the time so it is clear both for the purposes of the minutes and for those in attendance at the meeting.

Predetermination and Predisposition

Predetermination is defined as:

“Occurring when a member has fixed views on a matter and retains a closed mind when it comes to making the determination.”

Notes:



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Predisposition is defined as:

"A member must be open to the possibility that, however unlikely, they will hear arguments during the debate about the issue that will change their mind about how they intend to vote. As long as they are willing to keep an open mind about the issue they are entitled to take part in any vote on it."

It is not a problem for councillors to be predisposed to a particular view. That predisposition can be strong and can be publicly voiced. They may even have been elected specifically because of their views on this particular issue. It might be in favour of or against a particular point of view, for example an application for planning permission.

In summary, expressing an intention to vote in a particular way before a meeting (predetermination) is not the same as when a Member makes it clear they are willing to listen to the views of all sides before deciding on how to vote (pre-disposition). Pre-disposition in terms of Committee decision making is okay. Pre-determination however is not and can call into question the integrity of a whole Committee's decision and may lead to a decision being quashed.

Section 25 of the Localism Act says that a Councillor should not be regarded as having a closed mind simply because they have previously said / or acted in a way that may have, directly or indirectly indicated that view they may take in relation to a planning matter. It is important that in these circumstances, the Member considers their stance from the position of a 'reasonable onlooker' and decides whether, there would be, or there would be the appearance of bias.

If a member is pre-determined, or biased on an application they should withdraw from the Committee whilst it considers that particular matter.

Notes:



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Planning Committee Management

Public Perception of Planning

A planning committee can be the most visible part of the way decisions within a council are made. It is therefore important that the committee operates well. It is in many ways the public face of decision making.

Think about how the public and applicants view the process: is it easy to follow, fair and transparent?

Formation of a Committee

Section 101 of the Local Government Act 1972 provides for a local authority to arrange for the discharge of its functions by a committee, sub committee or an officer of the authority. A Local Authority appoints its committees at its Annual Meeting based on political proportionality¹. A Planning Committee or a committee of a similar name – (e.g. Strategic Planning, Planning Applications, Development, Development Management, Development Control etc) is formed by the Council in Councils. The size of a Committee can range from very small, say 7 members to up to 20 plus members. The appropriate size of a committee will reflect the overall size of the council and the number of members. Best practice would generally err on the side of smaller rather than large.

There are different models; some councils have one main Planning Committee, others have two separate A and B Committees which meet on a rotational basis and others have an area committee model.

Appointments to Committee

The Annual Meeting also appoints members to this Committee on a proportional balance basis.

Notes:



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¹ Local Government and Housing Act 1989 (section 15)

This is basically between party groups based on the number of seats each party has on the Council. The group leaders are the ones who put forward the names of the appointees based on their seat allocation. This is done either at the Annual Meeting itself or as soon as possible thereafter. Usually, a Cabinet Member would not be appointed to the Planning Committee.

Substitution of Members

A substitute member is one regarded as being able to attend where the regularly appointed one cannot for some reason. There have been conflicting views in the past as to the legality of substitution systems. There are at least two opinions from leading Counsel in support of the legality of such a system¹.

Substitute Members List

One method which is recommended is a list method for substitution. This would be where Council would appoint substitute members for each committee. Therefore the members would be named and appointed usually at the same time as other committee members are appointed at Annual Council. In relation to a Planning Committee this is welcomed as such a list can allow those members to be trained and build up their knowledge and therefore allow them to contribute to debate and decision making in an informed way. Substitutes should not take part in any deferred applications if they were not part of the committee for the previous discussion. Where an application has been considered and deferred to a future meeting for determination, the Democratic Services Officer needs to ensure that only those who considered the application at the first meeting can take part at the second meeting. This is particularly important where substitutes are concerned.

Notes:



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¹ Knowles, part 3 – Committee Practice>Substitute members page 220 sixth edition.
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Site Visits

Site visits by Committee members have become an increasing part of planning committee management. Most Councils now have procedures which incorporate 'do's' and don'ts' of attending site visits. One important principle is that a Planning Committee member can only take part in the debate and voting at a Committee meeting if they have also attended the preliminary site visit. In essence this means that all the Committee members have had access to the same amount of information for them to make their decision on.

The Local Government Association advise¹ that the following points may be helpful:

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply.
- keep a record of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers

Notes:

¹ Probity in Planning for Councillors and Officers: April 2013:
http://www.local.gov.uk/c/document_library/get_file?uuid=e0cde66c-8cda-4f56-b784-a45cdd41f089&groupId=10180



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- the comments of the applicant and objectors cannot be expressed adequately in writing or
- the proposal is particularly contentious

Site Visits Code of Practice

Many Councils have a code of conduct/ practice in place for site visits to enshrine such principles. The following is an extract from Wirral Council's¹

'Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial. A decision by the Planning Committee to carry out a site inspection should normally only take place when:

- there is considerable local concern about a proposal, allied to planning reasons for carrying out the visit (e.g. the physical relationship of the site to other sites in the neighbourhood); or
- if the impact of the proposed development is difficult to visualise from the plans and any supporting material; or
- the proposal is particularly contentious; or
- the proposal is contrary to a specific policy or raises wider policy issues'.

Ideally site visits should take place in advance of the committee meeting to avoid the need for a deferral and consequent delay to the decision making.

The Committee Agenda

To comply with legislation has to be publicly available at least five clear working days before the meeting².

Notes:

¹ <http://www.wirral.gov.uk/my-services/environment-and-planning/planning/development-team-approach/our-code-of-conduct>

² In line with the Local Government Act 1972 etc



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Normally all applications presented to the Planning Committee for decision will have a full written report from officers. This will include:

- the substance of any objections
- the views of people and organisations who have been consulted
- a clear explanation of relevant national policy (and regional policy in London), the Development Plan, site and related history
- any other material planning considerations
- a reasoned consideration of the proposal
- a clear recommendation
- an Ordnance Survey map showing the site location
- If there are plans these will also be available

Further Information

Any relevant planning information which is received after the agenda has been dispatched, will normally be presented to the Committee by officers and where possible circulated still in advance to Committee members. This must not be a process for bad agenda management and purely for circulating information because reports were not written in time but for genuine late information which could not be available to go out with the agenda. Many Councils also have their deadline for public speakers set after the agenda goes out and therefore information about who is to speak may also be circulated to committee members following the agenda dispatch. However, care should be taken about what information is circulated after the agenda goes out to be fair to all parties.

Notes:



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Role of Councillors

In making decisions on applications, councillors will¹:

- act fairly and openly
- approach each application on its own merits and with an open mind
- carefully weigh up all the relevant material planning considerations
- avoid undue contact with interested parties
- ensure that the reasons for any decision are clearly stated

Training of Councillors

Training for councillors who sit on a planning committee is not mandatory at a national level, but is good practice and is compulsory in many local authorities. This is particular important for councillors new to a planning committee, but all councillors should have regular updates on planning law and practice. It can be done in-house or by external providers.

The planning system exists to consider development proposals in the light of the wider public interest. Councillors must take into account the interests of the whole of the Borough and act in a way which is fair and is clearly seen to be so.

Party Whip

Councillors who are members of the Planning Committee must be free to vote on planning applications in the way they consider appropriate, that is, without a Party 'whip'. They will also take account of all the relevant information, evidence and arguments. These will include the Development Plan and all relevant planning considerations.

Notes:

¹ A typical description, taken from the Colchester Bough Council: Planning Procedure code of practice
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Joint Planning Committee

This is where 2 or more Councils (or the Council and another body) set up a Joint Committee for purposes in respect of which they are jointly interested (section 101 (5) LGA 1972). One example of this is the Cambridge Fringes Joint Development Control Committee, which was established in 2009 to determine major planning applications around Cambridge, in the major growth sites. The objective being for the 3 Councils to work together to achieve sustainable planning outcomes.

Area Planning Committees

A Council can appoint Area Committees as it sees fit. The composition of each Area Committee shall be members of the Council whose ward or part of a ward is contained within the geographic area of the Committee.

Each Area Committee shall administer a geographic area that does not exceed two-fifths of the total for the Council by reference to population or area. Planning functions can be delegated to such committees.

Annual review

A committee should reflect on how it has carried out its function and on the outcomes of their decisions. Some authorities carry out annual site visits to some implemented decisions.

Notes:



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