

GUIDANCE ON MEMBER INVOLVEMENT IN PLANNING PROCEDURES

Introduction

1. Members have a duty to observe the Council's Code of Conduct for Elected Members. Failure to follow this planning guidance without good reason may result in a finding of maladministration against the authority by the Ombudsman. Further in certain circumstances such a failure could result in the Council being subject to judicial review action. A failure to declare an interest may constitute a criminal offence.
2. This guidance gives specific local guidance in relation to the operation of the Town and Country Planning functions of the Borough Council, and in particular recommendations and decisions on the development plan, supplementary planning guidance, development briefs, planning applications and planning contraventions.
3. The aim of this guidance is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. This guidance applies to Members at all times when involving themselves in the planning process. It applies equally to planning enforcement matters or site specific policy issues as it does to planning applications.

General Role and Conduct of Members

4. While Members have a special duty to their ward constituents, their overriding duty is to the whole community. Members must represent their constituents as a body and vote in the interests of the whole Borough.
5. The basis of the planning system is the consideration of private proposals against the wider public interest. Much is often at stake in this process and opposing views can be very strongly held. Members must take account of views expressed but should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
6. Members *should* respect the role of officers to make recommendations and *must* not put pressure on individual officers to secure a specific recommendation on a particular case *or do anything else which compromises or which is likely to compromise the impartiality of the officers.*

Training

7. All Members of the Council *will be required to* participate in the training provided either by officers or through external training agencies on their role in the planning process, *including refresher training from time to time.* Officers will provide more detailed training at least annually for Planning Committee members. This training is essential for members to undertake this important role and will be *mandatory.* **A Member will be excluded from attending the Committee meeting until appropriate training has been undertaken.** At the request of the Committee, specific training on a particular planning issue can be provided by Officers.

Development Proposals Submitted by Members and Council Development

8. Members should not act as agents, or submit planning applications for other parties, or voluntary bodies. Where they need to submit applications on their own behalf or as part of their role outside the Council, they must declare an interest and take no part in processing the applications or in the decision making process.
9. Members who, in terms of their working life, act as consultants or specialist advisors and may have clients who are applicants for planning applications under consideration, though they may have had no involvement in that particular case, are advised to declare this interest when any application is considered. Further advice can be sought from the Council's Monitoring and/or Legal Officers.
10. Applications or proposals by the Council, by or on behalf of serving Members or by a third party involving land which a serving Member may own or have an interest in *should all* be reported to the Planning Committee as *main items*, for determination. *The Council's Monitoring Officer must also be informed of such proposals, prior to the matter being determined.*
11. Members *must* not address the Committee as the applicant or applicant's agent. *However, in such circumstances, Members should be entitled to the same rights as a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by the Committee.*

Lobbying of and by Members

12. It is *legitimate and* inevitable that, as Members fulfil their constituency roles, they will be subject to lobbying by interested parties and the public on planning matters and specific planning applications. When Members are lobbied they need to exercise great care to maintain the Council's, and indeed the Member's own integrity *and impartiality* and the public perception of the planning process.
13. When Members of Planning Committee are lobbied to support or oppose a particular *proposal they should take great 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 of the evidence and arguments*
14. *When lobbied Members of Planning Committee should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant officer, in order that their opinions can be included in the officer's report to the Committee. If, despite the above Members do express an opinion they should make it clear that they will only be in a position to take a final decision after having heard all of the evidence and arguments at the Committee meeting.*

In addition, Members of Planning Committee should, in general, avoid organising support for or against a planning application and avoid lobbying other Members as such actions can easily be misunderstood.

15. Members of Planning Committee who commit themselves firmly to a particular view on a planning issue prior to its consideration at committee must decide whether the public (or other interested party) would believe that they have prejudiced their position and were incapable of weighing up all the material considerations. *The proper course of action for such a Member would be to seek advice from the Council's Monitoring officer or Legal Services Team as to whether it could be considered that they have predetermined the application. Members should also be mindful of the need for Planning Committee to be quorate particularly where other*

Committee Members are already known to have either committed themselves to a particular view or to be likely to declare an interest in the matter.

16. Political group meetings should not be used to decide how Members should vote on a particular planning application. The use of political "whips" in these circumstances is *not appropriate and could amount to maladministration.*

Pre Application Member Involvement.

Community Consultation

17. Developers of major planning applications are required to carry out public consultation before an application is submitted to the Local Planning Authority. This clearly means that **all** Members and the local community will have a greater involvement in the planning process and an opportunity to shape future developments. An applicant must have regard to the responses received. Public consultation may include a letter drop to neighbours living near a site and can include public exhibitions/drop in sessions etc where the public are asked to fill in a feedback questionnaire. **Members may attend informal public consultation events organised by a developer as it is appropriate to ask questions, gather information and inform a developer about local issues. If they are also a member of Planning Committee they must avoid expressing a clear view of a proposal as this could be interpreted as predetermination. Cabinet members may also need to take care in expressing any views as it may be considered they could have some influence in a matter due to their senior position.**

Pre Application Consultation

18. Discussions at pre application stage between potential applicants/ applicants and the Council prior to the submission of an application can be very productive. These discussions can be of benefit to all parties, particularly where the proposal is complex or controversial. The Council operates a charging system for this service. It can also be very helpful for Ward Members and other key members to take part in these discussions so that a proposal can be fully explained, the member can ask questions and provide information about local issues and concerns. It is easy for such discussion to be misinterpreted or seen by objectors to be part of the lobbying process of the applicant. It is therefore essential that such discussions are held in line with established procedures.
19. All such discussions should be arranged through Officers. If a member receives a request to engage in such discussions, this should be brought to the attention of the Director of Planning and Housing or the Planning Manager who will then determine the level and nature of any pre application discussions. Officers should always be present to advise on procedures, planning policy and its interpretation and material planning considerations.
20. During any pre application discussions any members of Planning Committee should be careful not to express a view on a proposal which could give the impression of predetermination.

Obtaining Information

21. **Members are informed about planning applications received and determine by email in a weekly list sent by the Planning Service. In addition Ward members are individually notified about non householder planning applications in their Ward.**

22. If Members wish to see a planning file or see a planning case officer, it is advisable to make an appointment. Officers may be unavailable, out on site or in meetings.
23. If a Member has technical or detailed questions, **for example relating to highway, ecology or drainage issues**, that he wishes to raise at a Planning Committee meeting, whenever possible, the Case Officer should be informed in advance. This will enable Officers to undertake research or ask the applicant for a response before the meeting to ensure that a prompt and full reply is provided and the progress of the Committee meeting is not delayed.
24. If members receive any correspondence direct from an applicant or objector/supporter, it is important that Officers are informed and copies provided so that the contents of the correspondence can be reported openly to all Councillors and the public.
25. Officers will put all late representations to the Committee verbally, and where considered necessary provide a written summary. If too much late information has been received which would be difficult for Members and Officers to consider and assess, Officers may recommend deferral of the particular application to a later meeting.

Member Request for an Application to go to Committee

26. In accordance with the Constitution, a member request for an application to be presented to the Planning committee must be made to the Director of Planning and Housing within 28 days of the application being received. **There will be a presumption that an application will be presented to committee, subject to appropriate planning reasons being provided, unless there are exceptional circumstances to the contrary.**
27. Appropriate planning reasons to justify a request may include:
 - Traffic or parking issues
 - Impact on neighbour amenity
 - Noise and disturbance
 - Impact on tree or wildlife
 - Contrary to planning policies

Requests should be made in writing and forwarded to the Case Officer as identified on the weekly list.

Members are advised that:

Requests submitted after the 4 week deadline may not be considered.

Householder planning applications are unlikely to be presented to committee. Such applications raise predominantly neighbour issues and not the wider planning issues which are more appropriate for the committee to consider.

Prior Notifications for telecommunication developments or agricultural buildings, are not appropriate to be referred to the committee. This is because such applications have fixed timescales for determination which means there is insufficient time in the process for these applications to be presented to the committee. Members are encouraged to forward any comments they wish to make as soon as possible to the Case officer.

The Borough Council is consulted on County Matter applications and has 21 days in which to respond. It is therefore not possible to take these applications to committee.

Committee and the Decision Making Process

27. Members *with a prejudicial interest (see Code of Conduct)* in a planning matter or application may comment on the application when the matter is first brought into Committee for discussion but they should then leave the room and not vote on the matter. *Further they must not seek to improperly influence a decision on the matter.* This would apply also to those Members who have indicated before the meeting that they had reached a conclusive view on the matter, as their continued involvement could amount to maladministration as well as giving rise to legal challenges. *However, where a Member has a personal (rather than a prejudicial) interest, whilst the Member must always declare it, nevertheless he may stay in the meeting and may subsequently vote.*
28. Members who are unsure whether an interest should be declared should seek the advice of the Council's Monitoring Officer or a member of the Council's Legal Services Team. *However the final decision always rests with the Member.*
29. All matters on *Committee* agendas for decision will be the subject of an officer report containing all relevant information to enable a decision to be taken and a firm recommendation.
30. An overriding principle is that when local authorities are dealing with planning matters, they should only take into account material planning considerations.
31. Members *must* make their decisions on specific cases on the basis of material planning considerations relevant to each case, particularly the relevant policies of the development plan. Adequate weight should always be given to the Development Plan.
32. Representations received before the meeting and not included in the printed report, will be summarised orally or in writing on the same basis as the written summaries of representations in the report.
33. At the Planning Committee, the applicant/agent, objectors and any interested party is each allowed to address the meeting (in accordance with Standing Orders) for a maximum of 5 minutes. The order of the debate should be managed and if a number of interested parties all wish to speak, the contributions should be restricted in order to maintain a fair and balanced approach. Members should only take into account valid material considerations and note that opposition cannot be a reason in itself for refusing planning permission.
34. Members will make the decision on specific cases on the basis of the information included in the officer's report, any views expressed by interested parties and the discussion at the Committee meeting.
35. The Borough Council's own planning applications must be dealt with on the same basis as all other applications. Recommendations and decisions must be based only on material planning considerations and must not have regard to any other benefit which may accrue to the Council as a result of a particular decision on such an application.
36. Planning applications may give rise to significant media and public interest. When dealing with all applications it is particularly important for the Planning Committee to act in a professional way. Applicants pay a fee, in most cases, to help pay for the cost of processing their application. They should be treated promptly and with courtesy, fairness and openness.

- 37 During a Committee meeting, everything said may be scrutinised by the applicant, objectors, legal advisors and the press, so it is important for Members and Officers to be circumspect. Members should not speak to members of the public or pass or accept notes from them during a meeting. If a Member leaves the room during the meeting he/she should avoid talking to any applicant, objector or supporter who may be waiting outside the room.

Decisions Contrary to of Officer Recommendation and/or the Development Plan

38. Where a Committee intends or is minded to approve an application which is not in accordance with the Development Plan the material considerations which lead to this conclusion must be clearly identified and how they justify overriding the Development Plan must be clearly demonstrated.
39. The reasons for any decision by the Committee made against the officer's recommendation must be clearly stated at the time and will be included in the minutes of the meeting *and a copy placed on the relevant file.*
40. *In a case where the Committee wish to approve an application contrary to a recommendation of refusal, the decision should, where necessary, be delegated to the Director of Planning and Housing in consultation with the Chair and Vice Chair of the Committee. This is to enable Officers to draft appropriate planning conditions and for these to be agreed with the Chair and Vice Chair before a decision is issued.*

Committee Site Visits

- 41 Decisions *should only* be deferred by Planning Committee for site visits in exceptional circumstances. Site visits will be primarily to view the site and appreciate how the proposed development relates to the site and its surroundings. An officer or officers *should* be in attendance with Members.
- 42 *A decision should never be made as part of any site visit.*
- 43 In order to avoid lobbying and to maintain impartiality, the applicant/agent, supporters and objectors would not normally be invited to site meetings. If any third parties are present, members should not engage them in conversation about the merits of the proposal. The public right to address planning committee does not arise until the item is reached on the committee agenda. At no time during the site visit will the applicant, their agent, any objector or any other member of the public be allowed to address councillors. The site visit is not for further representations to be made.
- 44 Officers will outline the details of the development, display plans or drawings of the proposal, provide other relevant information and indicate features on the site which members need to note. Members of the planning committee may ask the planning officer for factual clarification of any planning matter relating to the proposal or surrounding land. Officers will make a record of Councillors attendance at the site visits which will be given to the committee clerk for minute purposes.
- 45 Site visits are part of the meeting of Planning Committee. Councillors intending to declare a personal interest should make this known to the Chair and Planning Officer on site. If the interest is not prejudicial the councillor may attend the site visit. Councillors intending to declare a prejudicial interest and withdraw from the meeting on the matter the subject of the site visit, should not attend the site visit.

46 **At no time during** the site visit should councillors debate or comment on the planning merits or otherwise of a proposal. Councillors should not discuss the merits of the application as the proper time for this is in the committee room after presentation of the Officers report and any additional representations. To do so might imply that the councillor's mind is already made up.

Appeals

44 Officers will prepare, and where necessary present the Borough Council's case in an appeal based on the terms of the decision and the material considerations on which that decision was made, whether or not that decision was in accordance with the Officer's recommendation.

45 Members must accept that, where officers prepare and present evidence at a hearing or inquiry, on a case where the decision was contrary to the recommendation, the planning officer giving evidence will, if asked, state his or her professional judgement on the merits of the case, even where this differs from the decision of the Committee.

46 **Planning Committee members and members representing the Ward in which the appeal site is located, are encouraged to attend the appeal proceedings and where appropriate give evidence to support the Officers case. Officers will provide help and advice to any Member intending to do this.**

Enforcement

47 Ward Councillors can help the Council's Enforcement officer by acting as 'eyes and ears' on the ground. If a Member considers there has been a breach of planning control, the Enforcement Officer should be informed promptly, and given all the available information. Members should not involve themselves in subsequent investigations and should not seek to confront or negotiate with alleged 'offenders'.

48 Enforcement is a legal process which can result in a prosecution and thus needs to be undertaken carefully in accordance with legislation. Members are reminded that a decision on whether or not to take enforcement action is a matter of judgement and expediency.

49 Officers will provide an annual report on Enforcement matters to the Planning Committee.

Review of Planning Decisions

50 Arrangements will be made for Members to visit a sample of implemented planning permissions annually, so that a regular review of the quality of planning decisions can be undertaken.

51 The outcome of this review will be considered by the Planning *and other appropriate* Committee, and may lead to identification of possible amendments to existing policies or practice.

Complaints

52 All complaints received will be dealt with by way of the Council's approved procedures.