

## **Protocol for Councillors and Officers Dealing with Planning Matters**

### **The General Role and Conduct of Councillors and Officers**

1. It is important to appreciate that whilst both Councillors and Officers serve the public, Councillors are responsible to the Electorate while 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 must be based on mutual trust and an understanding of each others' positions. This relationship must never be abused nor compromised.

### **Conduct of Councillors**

2. Councillors must act in accordance with the Council's Code of Conduct for Members and co-opted Members, which provides guidance and standards for Councillors. Breaches of the Code can be referred to the Monitoring Officer.
3. Whilst Councillors have a special duty to their Ward constituents, including those who did not vote for them, their overriding duty is to the whole community. Councillors should not favour any individuals or groups and, although they may be influenced by the opinions of others, they alone have a responsibility to decide what view to take. Councillors must therefore represent their constituents as a body and vote in the interests of the whole Borough. The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Councillors should take account of those views but they should not favour any person, company, group or locality or put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Planning Applications Committee.
4. Councillors should be extremely cautious about accepting gifts and hospitality and must act in accordance with the Council's Code of Conduct.

## **Declaration and Registration of Interests**

5. The Council's Code of Conduct and relevant legislation must be followed scrupulously. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct should be avoided. It is for each Councillor to consider the application of the Council's Code of Conduct to his or her personal circumstances.
6. Members must also be aware of the need to register certain Financial and other interests in a register maintained by the Monitoring Officer (Assistant Director Law and Governance). It is good practice to review those entries on a six-monthly basis, although any changes should be notified by Councillors within 28 days. Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Planning Applications Committee.
7. The position with regard to pecuniary and non-pecuniary interests is contained within the Council's Code of Conduct. The guiding rule for Councillors must be that one should not use one's position to further a private or personal interest rather than the general public interest or give grounds for such suspicion. Such private interests could arise through family, friends, clubs, freemasons, trade unions and voluntary bodies.
8. Members are advised to refer to the Council's Code of Conduct for the circumstances in which they will need to declare a pecuniary interest and withdraw from the meeting during consideration of an item.

## **Examples of situations where an interest ought to be declared and the Member ought to leave the meeting**

- (a) A planning application submitted by a local Golf Club of which a Councillor is a Member.
- (b) An application for development on land adjacent to or in close proximity to a Councillor's own residence.
- (c) An application lodged by a member of a Councillor's own family.
- (d) An application for development by a Company for whom a member of a Councillor's family may work.

## **Conduct of Officers**

9. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute (RTPI) Code of Professional Conduct. All Officers dealing with planning matters must comply with the following :-
  - (a) Members of the RTPI shall take all reasonable steps to maintain their professional competence throughout their working lives and shall comply with the RTPI Council's continuing professional development regulations as amended from time to time;
  - (b) Officers who, as managers, have responsibility for other employees shall take all reasonable steps to encourage and support such other employees in the maintenance of professional competence and where those other employees are members of the RTPI they should seek to ensure compliance with the RTPI's continuing professional development regulations;
  - (c) In all their professional activities, Officers shall not discriminate for any reason, but particularly legally recognised protected characteristics along with locally agreed protected characteristics and shall seek to eliminate such discriminations by others and to promote equality of opportunity;
  - (d) Officers shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions and shall not knowingly enter into any contract or agreements which requires them to do so;
  - (e) Officers shall take all reasonable precautions to ensure that no conflict of duty arises between the interests of the Borough Council and the interests of themselves or any third party. Any such conflict shall be immediately reported and subsequently confirmed in writing to all the parties concerned;
  - (f) Officers shall not disclose or use to the advantage of themselves or the Borough Council information acquired in confidence in the course of their work;
  - (g) Officers shall decline any discounts, gifts or commissions offered by any third parties in connection with their work as professional planners; and
  - (h) Officers shall take all reasonable steps to ensure that all town planning matters within the remit of the Borough Council are conducted in accordance with this Protocol, whoever undertakes the actual work.

## **Development Proposals submitted by Councillors and Officers, and Council Development**

10. Proposals to the Council as Local Planning Authority by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is vital that they are handled in a way which gives no grounds for accusations of favouritism.
11. Serving Councillors who prepare plans or generally act as agents for people pursuing a planning matter should play no part in the decision-making process for that proposal. Similarly, if they submit a proposal themselves, they should take no part in the processing

of that application.

12. The Executive Director Economy and Public Protection will endeavour to ensure that all such applications are identified and highlighted and will also take steps to ensure that the Councillor in question is aware of the contents of the Protocol and refer him or her to the Council's Code of Conduct.
13. The Council's Monitoring Officer should be informed of any such proposals.
14. Those proposals are to be reported to the Planning Applications Committee for consideration and not dealt with by Officers under delegated powers; the Monitoring Officer should be able to confirm in that report that the application has been processed normally and therefore must be given the opportunity to review the file.
15. Serving Officers should not prepare plans or generally act as agents for people pursuing a planning matter, with this Council. If they submit a proposal on their own behalf, they should take no part in the processing of that application.
16. Proposals for the Council's own development must be treated in the same way as those of private developers, in full accordance with the Council's Constitution and relevant Government advice contained in Circulars.

### **Lobbying of and by Councillors**

17. Lobbying is a perfectly proper part of the political process; those who may be affected by a planning decision will often seek to influence it through an approach to their elected Ward Councillor or a Member of the Planning Applications Committee. That is quite understandable and part of the political/representative process. However, such lobbying can call into question the impartiality and integrity of a Councillor.
18. The Council's Code of Conduct requires, amongst other things that Members (and co-opted Members) of the Council must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Authority. Furthermore, a Member (or co-opted Member) must not conduct himself or herself in a manner which could reasonably be regarded as bringing his Office or Authority into disrepute.
19. Members and Officers should avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants and objectors. However, Officers may give an indication in pre-application discussions of the nature of their likely recommendation to Members, particularly in the light of the provisions of the Development Plan, albeit on a 'without prejudice' basis.
20. Members of the Planning Applications Committee must not express an opinion to a person lobbying, they must make it clear that they will only be in a position to take a decision after having heard all the relevant evidence and arguments at the Committee meeting. Councillors should not commit themselves one way or the other before hearing all the arguments and evidence. Councillors who are members of the Planning Applications Committee should not participate in lobbying for a particular outcome.

21. There should be no political group meetings prior to the Committee meeting to decide how Councillors should vote.
22. Councillors should avoid organising support for or opposition to a planning application and avoid lobbying other Councillors.
23. Councillors must not put pressure on Officers for a particular recommendation.
24. Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer.

#### **Pre-Application Discussions - Requirements of Officers**

25. It should be made clear at the outset that any such discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
26. Advice should be consistent and based upon the Development Plan and all other material considerations. All Officers taking part in such discussions should make clear whether or not they are the decision maker.
27. A written note must be made of all potentially contentious meetings. At least two Officers should attend such meetings (for corroborative purposes) and a follow-up letter is advisable when documentary material has been left with the Council. A note similarly should be taken of potentially contentious telephone discussions.
28. Advice must not be partial nor seen to be partial.

#### **Pre-Application Member and Community Involvement**

29. Officers will offer to convene a meeting to allow potential developers to present their proposals for major developments, in initial draft format to Planning Applications Committee Members, Ward Councillors, interested local residents, and any relevant statutory consultees or organisations, allowing questions to be asked and feedback to be taken on board by the developers.
30. The main purpose of these meetings is to allow developers to hear important issues at an early stage that could be addressed as part of the planning application. These meetings are not a substitute for the formal planning process and to ensure that they do not fetter their involvement in subsequent decision-making. Members will be expected to essentially ask questions at these meetings rather than express a view.
31. The date, time and venue of the meetings will be publicised on the Council's website.

### **Officer Reports to Committee**

32. There will be pre-agenda meetings between the Planning Officers and the Chair and Vice-Chair of the Planning Applications Committee to discuss the Agenda for a forthcoming meeting.
33. All applications considered by the Planning Applications Committee should be the subject of full written reports from Officers incorporating firm recommendations. If the recommendations are contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated. If the views of Officers are finely balanced, the report should say so.
34. Officer reports to the Planning Applications Committee on delegated decisions should similarly set out the reasons for the decision.

### **Public Speaking at Planning Applications Committee**

35. Opportunities will be given for applicant and objectors and other interested parties, such as Parish Councils, to make presentations to the Planning Applications Committee.
36. In addition to local Ward Councillors and Parish Council representatives, normally only one speaker will be permitted to address the Committee on behalf of the applicant; three on behalf of supporters of the application; and three on behalf of the objectors. The time allowed for presentations is usually five minutes but this is at the discretion of the Chair of the Committee. This should be identical for all parties.
37. Each speaker will be given the opportunity to speak and then a right to reply following the presentation of the Officer's report. The applicant will have a right of reply after other speakers and the Officers will have the final comments.
38. Any documentary or visual evidence which a speaker wishes to use within their presentation to Committee must be provided to the Executive Director Economy and Public Protection no later than five clear working days prior to the date of the Committee meeting.

### **Decisions Contrary to Officer Recommendation and/or the Development Plan**

39. Where elected Members decide to grant permission against the Officer's written recommendation, the Minutes should record their reasons for doing so.
40. Where elected Members decide to refuse permission against the Officer's written recommendation, the Minutes should record their reasons for doing so.
41. Where elected Members decide to grant permission subject to conditions, the Minutes should record the reason for applying those conditions.
42. The Planning Officer should be given the opportunity to explain the implications of the contrary decision.

43. In the case of conditions which Councillors wish to add or amend, an Officer should be invited to draft such a condition and bring this back for approval at the subsequent meeting unless the drafting is straightforward and can be agreed at the initial meeting.

### **Committee Site Visits**

44. Site visits should be used only where the expected benefit is substantial. Examples of situations where the expected benefit would be substantial include:-
  - (a) Cases of alleged overlooking;
  - (b) Cases where a plan does not adequately indicate the relationship of the application proposal to neighbouring property;
  - (c) Cases where the effect on amenity cannot readily be discerned from plans;
  - (d) Cases where it is alleged that the amenity of a neighbour will be substantially affected;
  - (e) Cases where Members are unable to visualise the site from plans and any other supporting material including photographs (particularly rural sites);
  - (f) Cases where the proposal is particularly contentious; and
  - (g) Cases where the content of a proposal is particularly relevant, such as in a conservation area.
45. A record of the reasons why a site visit is called should be maintained by the Assistant Director Law and Governance.
46. The site visit should consist of an inspection by the Committee, with Officer assistance, to explain the impact of a proposed development.
47. The applicant and objectors will be informed that a site visit is taking place and may be present but the Committee will not be able to hear representations. The site visit will enable the parties to make clear various aspects relating to the proposal to the Members of the Committee. Site visits must not be used as a forum for debate.
48. A further guidance note in relation to site visits is appended to this Protocol.

### **Regular Review of Decisions**

49. Councillors involved with planning decision making should visit a sample of implemented planning permissions to assess the quality of the decisions they have made. Such a review should be undertaken at least annually and include examples from a broad range of categories, such as major and minor development, permitted departures from the Development Plan, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case.

50. Cabinet should formally consider the review and decide whether it gives rise to the need to review any policies or practices.
51. No Member should be appointed to the Planning Applications Committee without having agreed to undertake a period of training in planning procedures as specified by the Council.



## **PLANNING COMMITTEE SITE VISIT – FURTHER GUIDANCE**

This guidance note has been prepared to advise members of the public and Members of the Council when a site visit may be an appropriate way of assisting the decision-making process.

### **Introduction**

Some planning applications are decided by the Planning Applications Committee, however, a significant majority of applications are determined outside of this process by either the Chair's delegation or using the powers delegated to the Executive Director Economy and Public Protection.

In most cases, Members of the Planning Applications Committee reach a decision based on information provided in the Director's report about the planning application. This report takes into account the views of neighbours and all 'material' planning considerations. In addition, they will have the benefit of a presentation undertaken by the Planning Officer who will also make reference to a PowerPoint presentation containing relevant plans and photographs. Members will also have heard from agents, objectors and supporters. In the vast majority of cases, Members will have sufficient information to arrive at a decision.

Occasionally, the Planning Applications Committee resolve to defer consideration of an application to visit the site, before making a decision, having heard the Planning Officer present the relevant report. This note advises on the procedure that will be followed in those few occasions when such site visits take place.

An accompanied site visit will result in a delay in a planning application decision being taken. In view of this, they will not be undertaken when applicants, objectors or constituents request them without good planning reasons – see below.

National legislation requires Darlington Borough Council to not unduly delay decisions on planning applications and, dependent upon the application type, this delay may mean that the applicant is able to appeal against the Council not taking a decision if it does not do so in 8, 13 or 16 weeks. The decision on the planning application is then taken away from Darlington Borough Council and is decided by the Planning Inspectorate on behalf of the Secretary of State.

### **Why have a site visit?**

A site visit will only take place following a formal resolution of the Planning Applications Committee to do so. Individual Planning Applications Committee Members do sometimes visit sites on an unaccompanied basis at other times but these visits are not the subject of this protocol.

The purpose of an organised site visit is to enable Members of the Planning Applications Committee to understand more fully:-

- (a) The details of a site where development is planned;
- (b) The details of the surrounding area; and
- (c) Issues raised by residents and others about the plans

Usually, the above information will be available from the Committee report, the photographs and maps and the presentation as indicated above.

No decision on the related application will be taken at an accompanied site visit. Nor is it the purpose of the accompanied site visit to debate, at the site, the merits of the development; either between Members or with local residents or with the applicant or their agent. Debate about the application will only take place at the time when it is again in front of the Planning Applications Committee for formal consideration.

If the accompanied site visit gives rise to excessive lobbying or demonstrations, the Chair of the Planning Applications Committee may cancel the visit and arrange another in private.

### **Arranging Site Visits**

All Members of the Planning Applications Committee will be invited to attend the site visit, as will local Ward Councillors, should they not be Members of the Planning Applications Committee.

Where a proposal is considered, by the Planning Officer, to have a significant impact on an adjoining Ward, adjoining Ward Councillors will also be invited to attend. Occasionally, Officers of other services, such as Highways or Environmental Health, will be invited (by the Planning Officer) to attend a site visit to clarify factual matters.

Applicants and/or their agent will be advised of the intention to undertake a site visit and a copy of this protocol will be provided to them as well as all other attendees.

Permission will be sought, before the accompanied site visit, to enter private land where this will assist Members in understanding the development, the site and its relationship to the surrounding area. In the unlikely event that the landowner will not give permission, the site will be viewed from the public highway or from other adjacent land with the owner's permission.

### **Procedure at Site Visits**

- (a) Hospitality or assistance with travel to and from the accompanied site visit will not be accepted by Members from applicants or objectors given that this could be seen to show favour.
- (b) The Chair of Planning Applications Committee will oversee the conduct of site visits and he will formally open and close the organised site visit.
- (c) The Planning Officer, will note the names of all present.
- (d) At the request of the Chair, the Planning Officer will briefly describe the proposal to Members and will display plans and drawings. It is expected that Members will already be familiar with the planning officer's report. The Planning Officer, will also indicate matters of fact in relation to the proposal and surrounding land which Members should take account of.

- (e) Members may ask the Planning Officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of the planned development.
- (f) At no time during the site visit will Members debate or comment on the planning merits or otherwise of a proposal.
- (g) At no time during the site visit will the applicant, their agent, any objector or any other member of the public be allowed to debate the merits of the proposal with Members. This is because the accompanied site visit is not for further representations to be made; it is for Councillors to view the site and its surroundings so as to inform their subsequent decision taking when the application is presented back to the Planning Applications Committee.
- (h) In order to assist in ensuring that Members receive the same information, they are required to keep together in one group with the chair, during the entirety of the accompanied site visit. They will not break-off to discuss the proposal separately with residents or the applicant.

### **Other Matters**

Subsequent to the accompanied site visit, at the next available Planning Applications Committee, the Planning Officer will briefly summarise the planning issues and the purpose of the site visit including the main aspects viewed.