Planning - Good Practice Guide

Appendix

Introduction

This guidance applies to all Members when they are involved in the planning process. It applies when considering planning applications, enforcement matters and policy issues. It applies to Committee meetings and less formal occasions (e.g. meetings with officers or members of the public).

The aim of the guidance is to provide practical advice to Members when dealing with planning matters to ensure high standards of decision-making and reduce the risk of possible challenge.

1. Relationship to the Members' Code of Conduct

The Authority's Code of Conduct for Members sets out the general principles and obligations of Members. It also explains what constitutes disclosable pecuniary interests. Members must always apply the rules in the Members' Code of Conduct first. This guidance provides supplemental advice to Members in the specific context of planning.

2. Development Proposals and Interests under the Members' Code

Members must always declare personal and disclosable pecuniary interests in accordance with the Members' Code of Conduct

If you have a disclosable pecuniary interest in any planning matter, you must not take part in the debate or vote on it at Planning Committee unless you have obtained a dispensation from the Standards Committee. You must also leave the room when the matter is considered.

If you have a prejudicial interest (as defined by the Code of Conduct) in any planning matter you should not participate in the discussion or vote on the matter and you should leave the room after exercising any right to speak which a member of the public would have (should you wish to do so).

You should also not get involved in the processing of the application or use your position to discuss the proposal with officers or Members when other members of the public would not have the same opportunity to do so (i.e. cause people to think you are receiving preferential treatment because of your role as a Member of the Authority).

3. Predetermination and Bias

If you take part in a planning decision when you are biased, the decision can be challenged in the Courts and quashed. Predetermination is a form of bias.

The test is whether a fair-minded observer, having considered the facts, would conclude that there was a real possibility that the Member was biased.

The Courts have distinguished between predetermination on the one hand (i.e. a closed mind) and predisposition on the other. The Localism Act (s25) confirms that you will not be considered to have a closed mind "just because" of something you said or did that indicated what view you might take on any matter. Nevertheless, the Courts will consider all events leading up to a decision and consider what a fair-minded observer would think of the situation as a whole.

It is essential that you make your final decision only when you have seen and heard all the arguments presented, including the officer's report and presentation at Planning Committee. If you have firmly made up your mind before that time and are not prepared to consider further information, views or advice, then that indicates a closed mind and bias/predetermination.

If you are a member of a consultee body (e.g. parish, ~~district or county council~~unitary authorities) you can still take part in debates at the meeting of that consultee body provided that you:

- make it clear at that meeting that any views you express are based on the limited information before you;
- make it clear that you will reserve judgement and independence to make up your mind when the item comes before the Authority and that you will not commit how you will vote in advance; and
- declare your interest /previous involvement at the subsequent Planning Committee meeting.

If you consider that you have predetermined any matter you should not speak or vote on the matter and should leave the room whilst the matter is considered.

4. Contact with Applicants, Developers or Objectors

Pre-application discussions between a potential applicant and the Authority can benefit both parties and are encouraged. Officers work with applicants during the processing of an application to negotiate a scheme that meets the applicant's needs and accords with Development Plan policy and national guidance.

If you become involved in discussions with applicants, developers or objectors before the matter is determined you may give the impression to others that you have predetermined the application. You also run the risk of undermining the work of officers in negotiating a scheme that accords with the Development Plan. You should, therefore, follow the following guidelines:

- Clarify at the outset that any discussions will not bind the Authority, and any views you express are personal and provisional.
- Refer an applicant, developer or objector who approaches you about a planning application to officers if they need planning, procedural or technical advice.
- Avoid being drawn into negotiations which should be left to officers.
- Ensure that officers arrange and are present at any formal meetings with applicants.

- Follow the rules on lobbying below.
- Avoid directly representing an applicant, developer or objector at any stage in the process.

5. Lobbying

Lobbying is recognised as a normal and proper part of the decision-making process, and you are entitled to listen to the views of residents and interested parties. However, it is important that you retain your impartiality. Abiding by the following guidelines should ensure that you are not prevented from taking part in determining a planning application because of something you have said or done when being lobbied:

- Listen to what lobbyists have to say but suggest they contact the relevant planning officer with any detailed questions or concerns.
- Advise lobbyists that you must keep an open mind until the matter comes before the Authority and that you can't ~~express your views on the merits of the application or~~ agree to vote in a particular way or express such a firm point of view that it amounts to the same thing .
- Do not enter into a debate on the merits of the application as this may lead to your comments being misinterpreted.
- Don't accept gifts and hospitality from any person involved or affected by a planning proposal. If it is unavoidable, ensure it is of minimal value and notify the Monitoring Officer.
- Forward any written representation received to the relevant planning officer.
- Declare any lobbying at the relevant Committee meeting (specifying whether for or against the proposal).

6. Lobbying by Members

You should avoid acting as spokesperson for an organisation whose primary purpose is to lobby or promote or oppose a planning application. This does not mean you should not join general interest groups that reflect your areas of interest and that concentrate on issues beyond particular planning applications (e.g. The Ramblers, RSPB, CPRE or a local civic society). If the group has adopted a view on the matter you should declare a personal interest when the matter is discussed.

Be aware of the power of social media posts or re-posting and be careful to not give the impression that you will definitively vote in a certain way or act with a closed mind if you intend to participate in the decision making at Planning Committee

7. Site Visits

Site visits can be a valuable part of the planning process. However, holding an official site visit incurs cost to the Authority and delays determination of the application. It is also important that the public can understand why certain applications require a site visit and others do not.

Site visits should only be used where the benefit is clear and substantial. The Code of Practice in the **annex** sets out the procedure for deciding whether a site visit is required and, if so, the conduct of the site visit**.**

All Members of the Planning Committee should endeavour to attend site visits organised by the Authority. If you do not attend a site visit you must consider whether you have sufficient knowledge and understanding of the proposals to take part in the debate and vote at the following Planning Committee meeting.

You should not enter a site that is subject to a planning application other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias .

You have no individual right to enter private property. You may view a site from a public highway at any time but should not become drawn into discussions on the merits of any proposal.

8. General Behaviour during Committee Meetings

You should not encourage members of the public to communicate with you during the Committee itself (orally or in writing or by social media) other than through the formal scheme for public speaking, as this may give the appearance of predetermination or bias.

You should not take part in the decision on any proposal unless you have been present to hear everything that has been said at that meeting on the proposal, including the officer's presentation and any public speakers.

~~If you are using electronic equipment (e.g. iPad, mobile phone) during the meeting you should do so discreetly without disturbing others. You should be wary of creating an impression that you have not given your full attention to the debate before voting on any proposal.~~

Avoid exchanges by texting or using social media during the committee meeting as this may give the impression of undue external influence and may give the appearance of bias.

9. Involvement of Authority Members not on Planning Committee

Standing Orders provide that any Member may attend as an observer a committee to which he or she has not been appointed. Such a Member may:

- remain in the meeting for items of business that are considered in private and from which members of the public are excluded; and,
- with the Chair's permission, speak but not vote on any matter.

In such circumstances, you must still follow the Code of Conduct. If you have a **disclosable pecuniary interest,** you cannot speak and must leave the room whilst the Committee considers the matter unless you have obtained a dispensation from the Standards Committee. If you have a prejudicial interest you may only speak if a member of the public has such a right and must leave the room whilst the Committee considers the matter.

Any Member who wishes to attend Planning Committee and request an opportunity to speak on a matter should, if possible, notify the Head of Development Management or Chairman of the Committee prior to the meeting. You should sit separately from the Members of the Planning Committee, so that members of the public are aware that you are not a decision-making Member of the Committee. The Chairman may allow you to speak after the officer presentation and public speakers, and during the debate by Members, for a maximum of 5 minutes.

10. Decision Making

(1) Reports to Committee

Officers' written reports to Committee should aim to be accurate and concise and provide all relevant information. They should describe the proposal and have a reasoned planning assessment of the proposal including an analysis of all relevant planning policies and other material planning considerations. They should contain a written recommendation justified on the basis of the relevant policies in the Development Plan, and other material planning considerations. They should cover consultations and other representations but may not include copies of all letters of objection or support received. They should, however, summarise any material planning considerations contained in such representations. Complete copies of all such correspondence are placed on the planning file and are available to Members on the intranet.

If you become aware of new or additional information relevant to the determination of a case that is on the Planning Committee agenda you should advise the case officer as soon as you can. If you don't, the case may be deferred causing unnecessary delay.

You should not pressurise officers for a particular recommendation.

(2) Decision Making by Members at Planning Committee

In making decisions on planning applications, you must determine the application in accordance with the policies in your Development Plan unless material considerations indicate otherwise. Your Development Plan policies – which have been adopted by the Authority after wide public consultation and formal examination by a Planning Inspector - should not be set aside without sound planning reasons for doing so.

Members may approve, refuse or defer an application at Committee.

If you are proposing, seconding or supporting a decision, you must clearly identify sound planning reasons leading to this conclusion/decision, and identify the supporting evidence. If the proposal has been identified by officers as contrary to policies in your Development Plan, the reasons must be given prior to the vote and be recorded in the minutes. You should be aware that you may have to justify the decision by giving evidence in the event of any challenge (for example at a Public Inquiry or Judicial Review proceedings).

If you are minded to support deferring an application rather than make a final determination to approve or refuse, there must be a **clear planning reason and benefit** for doing so (e.g.

to hold a necessary site visit, to properly assess information submitted at the last minute, or to have the reasons for the decision tested and discussed).

Applications should only be presented to Members when all information considered necessary by the planning officer has been sought, and negotiations to produce an acceptable scheme have been completed. Deferring an application for officers to negotiate a further alternative is not generally a sound reason for deferment. It should only be used where Members have clear reasons for the deferment and can instruct officers as to the objective that the negotiation is intended to achieve.

(3) Decisions Contrary to Policy and/or Recommendation

The law requires that decisions are taken in accordance with your adopted Development Plan unless material considerations indicate otherwise. Officers will advise in their report which of the arguments put forward by an applicant, objector or supporter are considered capable of constituting material considerations. Often arguments of a personal kind relating to the circumstances of the applicant are put forward to support an application. Whilst these can be moving and persuasive, personal circumstances cannot outweigh other planning considerations except in the most exceptional circumstances.

Nonetheless, there will be occasions where you may be minded to vote to approve an application contrary to your policies. In this case you must identify clear and substantiated reasons that are capable of constituting material planning considerations.

The decision is ultimately the Committee's. However, it is imperative that the decision that is made identifies relevant planning considerations, and with detailed reasons set out to explain what might otherwise appear to the public to be inconsistency. The following procedure will, therefore, apply to proposed decisions contrary to officer recommendation:

a) Where a motion is put to a meeting that, if successful, would result in the determination of a planning application contrary to policy and/or the officer advice, the names of the Members voting for, against and abstaining in respect of that motion shall be recorded in the minutes.

b) Where a recorded vote shows an intention to determine an application contrary to policy or/and advice, the matter will stand deferred until the next meeting of the Committee unless there are no substantial doubts about the validity or soundness of the reasons (such to be advised by the Head of Development Management).

c) Where the Head of Development Management confirms that the reasons given are considered sufficient to justify the decision:

    i. the evidence or reasoning that supports the material considerations will be recorded in the minutes to ensure that the position is clear to all; and,

    ii. delegated authority shall be given to the Head of Development Management to determine appropriate planning conditions and/or planning obligations.

d) Where an application has been deferred under para b) above:

    i. a letter will be sent to the applicant explaining why the application has been deferred and what will happen next. Such applications will normally be considered as the first item of substantive business on the following Planning

Committee agenda. If this is not possible, the applicant and Members will be informed of the delay and the reasons for it;

ii. the officers will provide further advice to the Committee as to whether it is possible to strengthen the validity and soundness of the reasons put forward, and setting out appropriate conditions/planning obligations if the proposed decision was to approve the application.

(4) 'Call-in' of Applications by Members

The Authority's Scheme of Delegation stipulates that a Member can make a written request to the Head of Development Management that a planning application be considered by the Planning Committee rather than be dealt with by officers under delegated powers. The Member must specify a **public interest reason**.

A study of the public interest test applied to the Freedom of Information Act 2000 identified a number of relevant considerations. Those that are most applicable to planning are listed below.

(i) The issue affects a wide range of individuals or companies
(ii) Public health and safety
(iii) Damage to the environment
(iv) Major policy decisions
(v) The issue has generated public or parliamentary debate
(vi) Accountability for assets in public ownership
(vii) Issues that might affect the sustainability of local communities

It is apparent from the above that an issue has to have wide implications to be considered of public interest. It needs to affect a range of people or the community generally. It does not include the private interests of an individual.

The following question & answer format could provide the most easily used guide for Members:

Question	Answer
Are you being placed under pressure to call-in an application, for example by an agent working for the applicant?	If the answer is yes or probably, you should only call-in an application if YOU are convinced it needs to be decided at Committee and it is in the public interest to do this.
If the only beneficiary is the applicant and no other interests are served should I call-in the application?	No, as there is no wider public interest in having it determined by Committee, and it may be seen as unfair by other applicants whose similar applications do not go to the Committee for decision.
Objectors to a planning application have asked that I call in a planning application.	If their opposition is based on their own personal interests in preventing the application being granted, i.e. the effect on their own property, call-in is not appropriate. If they have identified a wider public interest as the basis of their concern call-in may be appropriate.

NB. It is always worth checking with the Planning Officers to ascertain the likely recommendation. If an application is scheduled to be determined under delegated powers, in a way which protects the public interest that you have identified, then a call-in to Planning Committee may not represent good use of the Committee's time.

11. Member Training

The planning system involves complex legal and technical issues that require the application of sound judgement. A failure to follow proper practice and procedures can lead to serious legal and financial consequences for the Authority. Therefore, Members may be unable to participate in decision making on Planning matters if they have not attended the mandatory planning training prescribed by the Authority.

Code of Practice for National Park Authority Site Visits

Purpose of a Site Visit

Site visits can be useful in identifying important site features relevant to a proposal that may be impossible to convey in a written report or by photographs, plans and drawings. However, they can cause delay in the planning process and should only be used where there is an expectation of clear benefit.

The purpose of a site visit is a fact-finding exercise. Site visits are not a forum for debating the merits of the application. Members of the public have an opportunity to put forward their *views* through written representations and the Public Speaking Scheme at the Planning Committee. All site visits will therefore be directed only to matters of fact /physical features.

Deciding whether a Site Visit is appropriate

Site visits will only be considered necessary where:

1. the proposal is particularly contentious; or,
2. the impact or effects of the proposed development are difficult to visualise from the plans and any supporting material including slides or photographs that form a part of the Officer presentation; or,
3. the comments of the applicant and objectors cannot be expressed adequately in writing

When a site visit is proposed at a meeting of the Planning Committee, the proposer should identify which of the criteria listed above applies.

Members will first vote on whether to see the visual presentation, before considering whether a site visit is necessary. If it is decided to see the presentation, then it will be shown with a factual commentary by officers but without the merits of the application being discussed.

In all cases a formal vote will be taken on whether to hold a site visit.

The Head of Development Management, in consultation with the Chair and Deputy Chair of the Planning Committee, may also authorise a site visit where he considers one of the criteria listed above applies and to wait for the next available committee meeting would unnecessarily delay the planning application. In such instances, Members will be provided with a draft report that sets out the key issues to be considered on site and the reasons why a site visit is considered necessary.

Procedure at Site Visits.

All members of the Planning Committee (and substitute members if they are to attend the meeting itself) should endeavour to attend. One or more planning officers will attend.

Members who have a disclosable pecuniary interest in the application should not attend the site visit unless they have obtained a dispensation from the Standards Committee. Members who have a personal (but not disclosable pecuniary) interest may attend but should declare the existence and nature of their interest at the outset.

Site Visits are not formal meetings of the Planning Committee. Public *rights* of attendance do not apply. The Authority will invite all Members of the Yorkshire Dales National Park Authority (YDNPA) to the site visit:

Members of the Planning Committee must not attend the site visit to represent the views of other authorities or bodies, but this does not preclude Members drawing attention to matters of fact, or decisions of those authorities or bodies.

The site visit will start with the Chairman reminding those present of the reasons for the site visit, and the need to concentrate on relevant issues. The site visit is to observe and seek information on physical features of the site only. The merits of the proposal should not be discussed.

The Planning Officer will explain the nature of the proposal and identify the key physical features for Members to assess on site.

Members will have the opportunity to ask questions of the planning officer. Members should confine their questions to points of clarification and should refrain from any declaration or indication of their views, in support of or opposition to the application, unless they intend to take no part in subsequent Planning Committee meetings.

If any member of the public is present at any point (e.g. the owner to enable access) you should avoid entering into any discussions with them on the application

An officer will take a brief note of the site visit. This will include a list of attendees and what matters/issues were pointed out. The note will be published as part of the main Planning Committee agenda when the application is considered.