

Draft/Protocol for the Guidance of Planning Committee Members and Officers

1. Introduction

- 1.1 One of the key purposes of the planning system is to manage development in the 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. It is important, therefore, that the local planning authority, both planning officers and the planning committee, make, planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way
- 1.2 Moreover, planning decision making is not an exact science but a process of informed judgement taken within a firm policy context. Decisions can be highly controversial due to their capacity to affect amenity and well-being as well as land and property interests, more so because the system actively invites public opinion as part of the decision making process. It is important, therefore, that the planning processes at the Council are characterised by open and transparent decision-making.
- 1.3 Consequently this Protocol is intended as guidance and a statement of good practice for all councillors and officers involved in the administration or operation of the planning process (including planning enforcement). It is not restricted to professional town planners and planning committee members

2. The Roles and Conduct of Members and Officers involved in the Planning Process

- 2.1 **Members and officers have different but complementary roles.** Both serve the public but members are responsible to the electorate, whilst officers are responsible to the Council as a whole. Officers advise members and the Council and carry out the Council's work. They are employed by the Council, not by individual members. It follows that instructions may only be given to officers through a decision of the Council or one of its duly constituted Committees or Sub-Committees or by the Cabinet as a whole or one of its duly constituted Committees or by an individual Cabinet Members in exercise of individual executive decision making powers. Any other system which develops is open to question.
- 2.2 Both members and officers are guided by codes of conduct. Of particular relevance to members involved in the planning process are

Paragraph 2(c) and 6(a) of the Members Code of Conduct which provides that a member:

'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'; and

“must not in his or her official capacity, or any other circumstance, use or attempt to use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage.”

- 2.3 If a member fails to comply with any of the requirements of the Members Code of Conduct this may be regarded by the local ombudsman as maladministration and may be the subject of a complaint to the Standards Committee. This could result in disciplinary action against the member by the Standards Committee or the First Tier Tribunal, the latter having the power to disqualify a member from holding office for up to five years.
- 2.4 Whilst members have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. Consequently, members of the planning committee serve the public interest and although they will be subject to intense lobbying on occasion and should take account of the views expressed, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should decline to be appointed to the planning committee.
- 2.5 If an Officer breaches the Officer Code of Conduct, they may be subject to disciplinary action in accordance with the Councils Disciplinary Procedure. Moreover, an officer who is also a Chartered Town Planners will be subject to the Royal Town Planning Institute's Code of Professional Conduct, a breach of which may result in disciplinary action by the Institute.
- 2.6 A successful relationship between members and officers can only be based upon mutual trust and understanding of each others positions. This relationship and the trust which underpins it must never be abused or compromised. Further guidance on this is set out in the adopted Protocol on Member/Officer Relations.

3. Registration and Declaration of Interests

- 3.1 The Members Code imposes requirements on members in relation to the registration and declaration of interests as well as specifying the effect that specific declarations will have on a Members participation in the decision making process.

- 3.2 Guidance on personal and prejudicial interests reference may be obtained from the Monitoring Officer and reference should be made to the guidance published by the Standards Board titled '*Code of Conduct guidance 2007*' which may be downloaded from the Standards Board web-site. However, the ultimate responsibility for complying with the obligations to declare interests imposed by the Members Code and to act accordingly, rests with each member.
- 3.3 In addition, a Register of Members' Interests is maintained by the Monitoring Officer and is available for public inspection. The Members Code requires all members to provide the Monitoring Officer with written details of relevant interests within 28 days of the date of acceptance of office. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.
- 3.4 The Members Code also provides that a member will have at least a personal interest to declare at the Planning Committee if a planning application relates to or is likely to affect an interest contained in the Register of Members Interests. They will also have at least a personal interest in any planning application that would affect the well-being or financial position of the member or a 'relevant person' to a greater extent than the majority of the inhabitants of the ward affected by the application.
- 3.5 A relevant person is very widely defined to include the members spouse/partner family members, relatives and close associates or his or their, employers, business partners or fellow directors (if they are a remunerated company director) as well as any outside body to which member has been nominated or appointed by the Council and other bodies which exercise public functions or are charitable in nature or who seek to influence public policy such as a political party or trade union, of which them member is a member or in a position of general control and management.
- 3.6 A member who has a personal interest in a planning application must also consider whether that interest also constitutes a prejudicial interest. The test of this is whether it would be reasonable for a member of the public with knowledge of all the relevant facts to consider that the nature of the member's interest was likely to affect their judgement of the public interest - i.e. affect or influence their voting intentions.
- 3.7 If a member only has a personal interest to declare they must declare both the existence and nature of that interest at the commencement of the consideration of the application or when they become aware of it (if later). Thereon they are entitled to remain in the meeting and speak (if a ward member) and speak and vote (if a member of the Planning Committee).

- 3.8 If a member decides that their personal interest is also prejudicial interest they must declare that fact in the usual way. They then have two choices: They must either leave the meeting for the duration of the consideration of the application, or, exercise public speaking rights (see below) and then leave the meeting for the remainder of the consideration of the item.
- 3.9 Members who have substantial property interest or other interests which will result in the frequent declaration of prejudicial interests should avoid serving on the Planning Committee.

4 Hospitality and Gifts

- 4.1 Any offer of hospitality or offer of gifts to either Councillors or Officers should in the first instance be declined politely. If receipt of hospitality or acceptance of a gift with a value of £25 or more is unavoidable, declaration of its receipt should be made to the Monitoring Officer within 28 days who will enter it in the Register of Members Interests. Registration gives rise to a personal interest which has to be declared if less than two years old.

5. Training

- 5.1 Council appoints members to the Planning Committee at the Annual Meeting and is legally required to give preference to the nominations of the political party groups in order to achieve political balance. This will take priority over any other requirement that the Council may wish to impose on the appointment of members to the Planning Committee, such as a requirement that a member will first receive training. However, it is expected that all members of the Planning Committee (including substitute members) will participate in initial and regular update training and members who are not willing to do so should decline to be appointed to the Planning Committee.

6. Lobbying

- 6.1 Concerns on poor practices within local authorities have often been based on the issue of lobbying. Lobbying 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. When being lobbied, councillors (members of the planning committee in particular) should 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 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 they 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 the relevant evidence and arguments at committee.

- 6.2 Problems should not arise if Councillors simply listen to a point of view about a planning proposal and provide procedural advice (in particular referring the person to Officers if he or she is a member of the public and not professionally represented). Those members of the public who have sought professional representation should be encouraged to make any points concerning their application through their professional advisor.
- 6.3 Planning Councillors could find themselves in a difficult situation at a later date if they indicate or give the impression of support or opposition to a proposal or declare their voting intention before a decision is to be taken as this could be taken to be pre-determination of the outcome. It is important that all decisions should be made after all relevant information and views have been taken into consideration.
- 6.4 Planning Councillors should not organise support or opposition, lobby other Councillors or act as an advocate or put pressure on Officers for a particular recommendation (although a Councillor may address a Planning Committee under Council Procedure Rule 24.1).
- 6.5 Planning Committee Members who find themselves in a situation which is developing into lobby should actively take steps to prevent this happening or at least explain that whilst they can listen to what is being said they are constrained from expressing their point of view or an intention to vote one way or another, otherwise they may well have to declare an interest and not take part in the subsequent Committee decision. In a case where this has actually happened the Member should declare accordingly.
- 6.6 Councillors who are unsure whether an interest should be declared or not should seek legal advice (which may be obtained from the Council's Monitoring Officer), although the ultimate decision rests with the individual councillor and nobody can make the decision on their behalf.

7. Members' Applications

- 7.1 Serving Councillors and Officers should never act as agents for people pursuing a planning matter with their Authority. Should they submit their own proposals to the Council they should take no part in its processing.
- 7.2 Members are requested to notify the Planning Applications and Enforcement Manager of their intention to make a planning application and are required to declare on the face of the Application form that they are a member of the Council..
- 7.3 A planning application by a Member will be determined by the Planning Committee, not by an officer.

8. Officers' Applications

- 8.1 As soon as an officer submits a planning application, they should inform the Council's Monitoring Officer in writing. A copy of the notification will be placed on the Register of Officer's interests maintained by the Monitoring Officer.
- 8.2 Applications submitted by or on behalf of an officer shall be determined by the Planning Committee. The Planning Committee will be informed of the fact that the application is made by or on behalf of an officer.

9. Membership and Planning Committee and Substitutions

- 9.1 The Planning Committee consist of 15 members reflecting the representation that the party groups have on full Council. A system of substitution also applies to the Planning Committee, meaning that a committee member who is unable to attend a meeting can appoint another member to attend the meeting in his or her place. Substitutions at a Planning Committee shall only be permitted from a designated pool of substitute Members to be agreed at the Annual Meeting of Council each year (and updated as required at subsequent meetings of Council).
- 9.2 It shall be the responsibility of the Member unable to attend the Planning Committee meeting to appoint a substitute Member from the pool and inform the Democratic Services & Scrutiny Manager, in accordance with the Council's Constitution.

10. Weekly List of Planning Applications and Call-In Procedure

- 10.1 Subject to the exceptions described in Paragraphs 7 and 8 above (member and officer applications) and Paragraph 14 below (departures from the Development Plan) all planning applications may be determined by the Director of Regeneration Services under delegated powers unless 'called in' by a Member for determination by the Planning Committee.
- 10.2 Any request by a Member for an application to be determined by the Planning Committee shall be made in writing to the planning Case Officer and Planning Applications and Enforcement Manager. That Member will be required to justify the need for the item to be determined by the Planning Committee on planning grounds.
- 10.3 Members will be notified of all planning applications for planning permission, listed building consent, conservation area consent, consent to display advertisements, applications under regulation 3 and 4 of the Town and County Planning (General Regulations) in respect of development by Thanet District Council, and applications for prior

approval under Part 24 of the Town and Country Planning (General Permitted) Development 1995 (as amended).

- 10.4 Notification will be in the form of individual letters and by means of the weekly list of planning applications circulated to all Members. Any request for an application must be made within 3 weeks of the date of the weekly list. However, should subsequently the applicant amend the application prior to decision the Members within whose ward the application site lies will be further notified by letter or e-mail and given a further specified period of not less than 7 days for requesting that the application be determined by the Planning Committee.
- 10.5 In exceptional cases the Chairman of the Planning Committee can agree to an application being determined by the Planning Committee at the request of a Ward Member beyond the above specified periods provided that the application has not already been determined by the Director of Regeneration Services.

11. Decision Making at Planning Committee

- 11.1 The Committee will receive a written report from the Planning Officer on each planning application it considers. The application report will include a recommendation from the Planning Officer.
- 11.2 The Officer will briefly describe the proposal and table any consultation responses and representations received after the agenda and reports for the meeting had been published, Thereon public speaking will take place as set out at Paragraph 12 below. The Chairman will then ask the Officer to present the report.

Moving the Motion

- 11.3 The Chairman will normally move the officer recommendation from the chair and seek a seconder purely in order to facilitate a debate on the application under consideration. As such, this will not constitute predetermination on the part of the Chairman and seconder.

Amendments

- 11.4 Where the motion under debate is to grant planning permission a member may propose an amendment to vary or delete a proposed condition or to add an additional condition. Where the motion under debate is to refuse planning permission a member may propose an amendment to vary or delete a ground of refusal or to add an additional ground of refusal. Any member proposing an amendment will be required to give planning based reasons for the amendment which will be recorded in the minutes of the meeting. The Council's Constitution expressly prohibits 'negating' amendments, i.e. that propose the direct reverse of the motion under consideration, for example, where the

motion under consideration is to grant planning permission and the purported amendment is to refuse to grant planning permission.

Refusal of Planning Permission against Officer Advice

- 11.5 Where the Planning Committee is minded to refuse planning permission against officer advice the Planning Committee is required to give adequate and intelligible reasons on good planning grounds for refusing to grant planning permission and these ground(s) of refusal must be in the minds of members of the Planning Committee at the point of refusal. In addition, the Council is at risk of having costs awarded against it, if, subsequently on appeal, it is unable to justify each ground of refusal.
- 11.6 If it is evident to the Chairman in the course of a debate on an application that the Committee is minded to refuse planning permission contrary to the recommendation of the Planning Officer, he will withdraw the motion to grant planning permission and propose and seek a seconder for a motion that the Committee is 'minded to refuse' the application. If seconded the motion will be put to a vote without debate. If carried the Chairman will promote a discussion on the grounds of refusal and will also seek the advice of the Planning Officer advising the meeting. At the conclusion of the discussion the Chairman will then move and seek a seconder or seek a mover and seconder of a motion to refuse planning permission on the ground specified in the motion.

Grant of Planning Permission against Officer Advice

- 11.7 Where the Planning Committee is minded to grant planning permission against officer advice the Planning Committee is required to give adequate and intelligible reasons for granting planning permission as well as considering what conditions should be imposed and the reasons for those conditions. In addition, where the grant of permission would constitute a departure from a policy or policies in the Development Plan, Members will need to identify clear and substantial material considerations that justify departing from the Development Plan.
- 11.8 If it is evident to the Chairman in the course of a debate on an application that the Committee is minded to grant planning permission contrary to the recommendation of the Planning Officer, he will withdraw the motion to refuse planning permission and propose and seek a seconder for a motion that the Committee is 'minded to grant' planning permission for the application. If seconded, the motion will be put to a vote without debate. If carried, the Chairman will promote a discussion on the reasons for granting planning permission and will also seek the advice of the Planning Officer advising the meeting. At the conclusion of the discussion the Chairman will then move and seek a seconder or seek a mover and seconder of a motion to grant

planning permission on the ground specified in the motion and delegate the power to the Director of Regeneration Services to issue a planning decision notice with conditions attached that reflect the intentions of the Planning Committee.

Voting

- 11.9 At the conclusion of the consideration of an application the Chairman will call for a vote. Voting on any motion will normally be signified by a show of hands but if there is no dissent may be signified by the affirmation of the Committee. In the event of an equality of votes the Chairman may exercise a casting or second vote and no record shall be made at the time of voting of the votes of individual Members unless, before a vote has been taken a majority of the members present have demanded a recorded vote in accordance with Council Procedure Rule 21.4. After a vote has been taken by affirmation or a show of hands a Member may also request that his or her vote is recorded in the minutes of the meeting.

Deferral

- 11.10 Where material considerations not covered in the Planning Officer report are raised in public speaking, or in questions from Committee Members, the application may be deferred so that further information is included in the report of the Planning Officer.

12. Public Speaking on Planning Applications

12.1 The Council operates a system of limited public speaking at Planning Committee, meaning that the Committee will receive and take into account representations from a number of interested parties prior to the application being considered by the Planning Committee. Representations are limited to three minutes per speaker and are taken in the following order: -

- **From the applicant or his or her representative;**
- **From one* person raising points of concern;**
- **From one representative of the Town or Parish Council (if applicable);**
- **From a ward councillor who indicates to the Chairman that he or she wishes to speak; and**
- **From a councillor who has declared a prejudicial interest in relation to the planning application but who wishes to address the Committee prior to leaving the meeting.**

*** From three persons in the case of a major planning application.**

12.2 In practice the Council will write to all persons who have raised points of concern on a planning application advising of the date

that the application will be considered by the Planning Committee and giving information as to how to register to exercise public speaking rights at the meeting. Currently, applications to register to speak must be received by the Council by not later 12.00 noon on the Monday preceding the date of the meeting of the Planning Committee and is on a 'first come first served' basis, that is to say the person who registers to speak first will be successful - or in the case of a major planning application, the first three such persons.

13. Site Visits

- 13.1 A site visit should only be necessary if the impact of the proposed development is difficult to visualise from the plans and supporting material (including photographs taken by Officers) Site visits may cause delay and additional costs and should only be used where the expected benefit is substantial .
- 13.2 A site visit is a fact finding exercise and should consist simply of an inspection by viewing Members with Officer assistance in the presence of the applicant and any objectors, or even an unaccompanied visit (ie without applicant and objectors), as the main purpose of a site visit is to see the subject matter of the application.
- 13.3 Each site visit will be chaired by the Chairman of the Planning Committee or in his or her absence by the Vice Chairman. If the Chairman and Vice Chairman are absent, the members present will elect a Chairman from among their number.
- 13.4 It will be the responsibility of the Site Visit Chairman (i) to conduct the site visit in accordance with this protocol, (ii) determine whether to permit public speaking, and (iii) decide whether to accede to a request to observe the site from a particular vantage point.

Protocol Compliance

- 13.5 A statement will be read out before the commencement of a site visit, making it clear what the purpose of the visit is, and the limitations that exist on the business that can be transacted during that visit. The Site Visit Chairman will the ask the Planning Officer to explain the proposal and outline the main issues

Public Speaking

- 13.6 No public speaking will be permitted at site visits unless the applicant or his professional representative is present **and** the Site Visit Chairman gives his consent. In such circumstances public speaking will take place in a publicly accessible location unless the applicant has given permission for the Committee and objectors to enter the site.

Public speaking will be limited to not more than three minutes per contributor and contributions will be taken in the following order:-

- From the applicant or his or her representative;
- From one person raising points of concern;
- From one representative of the Town or Parish Council (if applicable); and
- From any ward councillor who is present.

Requests to View Site

- 13.7 The Site Visit Chairman may at his or her discretion also accede to a request made during public speaking for the Committee to view the site from a particular vantage point. In exercising this discretion the Chairman will take into account the willingness of the applicant or an objector (as the case may be) to permit all the interested parties to view the site from that vantage point.
- 13.8 In the interests of fact finding members of the Committee may ask questions of any interested party (including the Kent Highway Services Officer) at any time provided such questions are directed through the Site Visit Chairman. Members should not engage individually in discussion with applicants or objectors or their professional representatives as this could be construed as lobbying

14. Development Plan Departures

- 14.1 All applications not in accordance with the development plan must be identified as soon as possible.
- 14.2 If approval is recommended, all material considerations must be clearly identified and how members justify overriding the development plan clearly demonstrated.
- 14.3 If the Officer's report recommends approval of a departure the justification for such a departure must be included in full in the report.
- 14.4 The Planning Committee may approve such a departure although the application may then have to be referred to the Secretary of State for Communities and Local Government depending on the type and scale of development proposed.
- 14.5 Addenda and conditions may be attached to an application at the request of Members but as in 11.7 any such conditions must be fully minuted with the mover and seconder recorded.

15. Changes to an Application (Amends needed)

- 15.1 No material change to any planning application shall be considered at Committee unless it has been subject to adequate public consultation

16. Briefing Meetings

- 16.1 If a briefing meeting is held prior to any meeting of the Planning Committee it shall normally be attended only by the Chairman, Vice Chairman and Officers and shall be for the purpose of Officers informing the Chairman and Vice Chairman of any additional matters since publication of the agenda that do not appear in the reports.
- 16.2 The briefing meeting would enable notification of concerns or amendments to any application and enable the Chairman and Vice-Chairman to consider if such amendments constitute a material change, or whether a verbal report from the Officer or Officers is acceptable and within the Standing Orders governing the conduct and management of a meeting.