



# DRAFT PROTOCOL ON PLANNING

## 1 Purpose and Status

- 1.1 This Protocol has been prepared as a public guide to the conduct of all the District's Councillors and staff who come into contact with the planning process, both with the development plan and development control. It applies to all members and professional planning officers. Its aim is to ensure and to demonstrate that the Council takes its planning decisions openly, impartially and for sound, justifiable planning reasons. The Protocol takes into account the Human Rights Act 1998, and public speaking at Development Control Committee meetings and any planning related meetings.
- 1.2 Councillors must observe the Members' Code of Conduct adopted by the Council and the Council's staff is subject to a Code of Conduct for Employees. In addition, professional planning officers are bound by their Institute's own Code of Conduct. This protocol should be read in conjunction with the Member and Officer Codes of Conduct included in the Council Constitution.
- 1.3 This Protocol provides supplementary and localised guidance on how the planning system in Wear Valley District should be run. The Council's Standards Committee has approved it and, where appropriate, it is reflected in the Rules of Procedure and Staff Handbook, and supported by operational procedures approved by the Council. It will be made available to the public free of charge and will continue to be kept under regular review.
- 1.4 The Protocol provides a measure against which the Council's operation of the planning system is to be judged. Adherence to the Protocol should reduce cause for complaint by the public. However, when complaints are made they will be assessed for a breach of the Codes of Conduct and a breach of the Protocol. Complaints that involve an alleged breach of the Members' Code of Conduct may be referred to the Standards Board for England. The Monitoring Officer will be the initial point of contact in respect of any complaint alleging a breach of this Protocol, who may decide to refer the matter to the Council's Standards Committee.

- 1.5 Planning Officers, in carrying out their roles, should where relevant comply with the Council's Code of Conduct for employees. Failure to comply with the Code could result in the Council's disciplinary procedure being invoked. Failure to abide by the Protocol is likely to result in a complaint being upheld. Similarly, breaches of the Protocol may provide grounds for a finding of maladministration by the Ombudsman. Likewise the conduct of any Member may be measured (for consistency) by the Standards Board for England against the requirements of the Code of Conduct.

## 2 The Human Rights Act

- 2.1 The Human Rights Act 1998, and in particular Article 6, is concerned with guaranteeing procedural fairness in the determination of civil rights and obligations, especially the entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal. These principles are at the heart of the planning system. Regard has been paid to the Human Rights Act 1998 in drawing up the Protocol and adherence to the Protocol should help to ensure that these principles are honoured in the day-to-day operation of the system and that there are no breaches of the Act.
- 2.2 Should any Councillors, members of staff or public, have any queries about the operation of the Protocol they should contact the Director of Regeneration or the Monitoring Officer.

## 3 General Principles

- 3.1. In this Protocol the following words have the following meanings:-

**“Planning Decision”** means a decision on any planning application by an officer under delegated powers or the Development Control Committee, or Council and a policy decision on a planning matter including a decision in relation to the local development framework made by the Regeneration Committee or the Council.

**“Personal Interest”** means an interest defined in paragraph 8 of part 1 (General Provisions) of the Council's Code of Conduct.

**“Prejudicial Interest”** means an interest defined in paragraph 10 of part 1 (General Provisions) of the Council's Code of Conduct.

- 3.2. All planning decisions, whether related to preparation of the Development Plan or to the control of development, will be taken in the interests of the whole District.
- 3.3. Planning decisions will not reflect party political considerations and, when made at the Development Control Committee, will only be taken after the receipt of a written report and in the light of any debate at the Committee. In making a Planning decision the law requires the decision-maker to take decisions fairly, openly, impartially with sound judgement and for justifiable reasons.
- 3.4. The Protocol will be kept up-to-date through regular review and the Development Control Committee will be informed of any important case law, and decisions by the Standards Board and Ombudsman and any advice or guidance by the Standards Board.

## **4 Training Requirements**

- 4.1 It is fundamental that all members (including members who are also Parish or Town Councillors) involved in planning should be able to properly discharge the responsibilities placed upon them.
- 4.2 To give effect to this any Member involved in the planning process (whether at the Development Control Committee, Regeneration Committee, or the full Council) shall undertake training in planning procedures; the provisions of this protocol; and attend sessions designed to keep Members abreast of new developments, in accordance with an agreed training programme. Such training is compulsory.
- 4.3 Even if a Member does not serve as a member of the Development Control Committee, or the Regeneration Committee this training need should be regarded as a high priority, as it may sometimes be necessary for a Planning Decision to be taken by the full Council. Likewise, Members who are not serving on the Committee may wish to attend on occasions as non-Members to speak on a particular case.
- 4.4 All relevant planning officers should be trained in the provisions of this protocol as part of their professional training.

## **5 General Conduct of Councillors and Officers**

- 5.1 Impartiality is crucial for public confidence in the successful operation of the planning system. Gifts or hospitality if accepted might be open to misinterpretation. Of particular sensitivity is a situation where a member or officer may determine a planning application or planning policy is offered a gift or hospitality from a person or organisation who stands to gain or lose from the determination. If a gift or hospitality over the value of £25 is accepted, either before or after a determination, it must be declared in writing to the Council's Monitoring Officer in accordance with the Members' Code of Conduct as soon as possible.
- 5.2 Where an offer of a gift is made to an officer the officer concerned should act in accordance with the guidance set out in the Officer Code of Conduct contained in the Council's Constitution.
- 5.3 Social contacts involving Councillors and officers with developers, agents and other frequent users of the planning system are inevitable but, as a general rule, should not be encouraged. Such contact should be avoided when a relevant issue is before the Council. However, if contact is made it should be recorded and either a personal or prejudicial interest may need to be declared depending upon the circumstances.

## **6 Declaration and Registration of Interests**

- 6.1 Councillors must follow the Members' Code of Conduct regarding Personal and Prejudicial Interests.
- 6.2 Councillors who sit on, or address, the Development Control Committee, or any other meeting of the Council that considers a planning matter, must disclose the existence and nature of any personal interest at the beginning of the consideration of the item of business or as soon as the interest becomes apparent.
- 6.3 In addition to declaring an interest at the meeting, notification of intention to declare should, if possible, be given to the Chair and Clerk prior to the meeting.
- 6.4 Councillors must notify the Council's Monitoring Officer of any change to their registerable interests within 28 days in accordance with the Code of Conduct.

- 6.5 When Councillors have business or other interests, which are likely to bring them into frequent contact with the planning system, they should not serve on the Development Control Committee and Regeneration Committee.
- 6.6 Should the number of declarations made by a member of the Development Control Committee become so great as to cause concern, the Monitoring Officer will draw the matter to the attention of the Committee's Chair and Vice-Chair.
- 6.7 Guidance to all staff on declarations of interest is set out in the Staff Handbook.

## **7 “Dual Hatted” Councillors**

- 7.1 The position of Members who are both District and Parish or Town Councillors requires particular attention. Paragraph 10(a) of the Council's Code of Conduct states that a “dual hatted” Member does not have a prejudicial interest simply by being a Member of the other authority. However, the “dual hatted” Councillor has a Personal Interest by virtue of membership of a Parish or Town Council. This must be declared but does not prevent the Member from participating in the District Council decision.
- 7.2 The Standards Board for England's Guidance for Members September 2004 states that a dual-hatted member is not automatically prevented from considering the same issue at more than one tier of local government, including speaking and voting in both tiers. It emphasises for example, if an issue comes up for discussion at both the parish and district level, and the member sits on both authorities:-
- the member should: at the parish or town council level, make it clear that you will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier;
  - at the district level, declare a personal (but not prejudicial) interest arising from your membership of the parish council or town council which has already expressed a view on the matter, and make it clear that the parish or town council's view does not bind you and that you are considering the matter afresh.
- 7.3 These guidelines apply even if a proposal has a direct impact on a particular location. For example, to continue the example of a parish and district councillor, there is no objection, in principle, to you speaking and voting on issues in the district council's development plan that particularly affect your parish. Of course, you must still consider if you have a

prejudicial interest arising from the impact of the proposals on your well-being or financial position. In such circumstances, it would not be appropriate for you to rely on paragraph 19(2) of the Code of Conduct.

- 7.4 Councillors should bear in mind that one circumstance can result in a prejudicial interest. This is discussed in Section 8 below and is related to Members “fettering their discretion”.

## **8 Fettering the Members’ Discretion**

- 8.1 District Councillors (including those who are also Members of Town or Parish Councils) should take care to ensure that they are seen to maintain an open mind until they have heard all the evidence and arguments which will be presented at the Development Control Committee or Regeneration Committee and, if necessary, the full Council.
- 8.2 However, if Members in advance of the decision-making meeting commit themselves to a firm view on a planning matter and state this publicly, whether in meetings of another body, in the media, in election material, or otherwise, they would be unable to demonstrate that all the relevant facts and arguments had been taken into account.
- 8.3 Where a Member has fettered his or her discretion as set out in 8.2 above, whether before or after election to the Council, it may be regarded as a prejudicial interest as defined in Section 3.1 above. A member taking part in a meeting in such circumstances must declare a prejudicial interest and they must leave the meeting.
- 8.4 Any Member who is uncertain as to whether his or her actions would be regarded as having fettered his or her discretion should ask the Standards Committee or the Monitoring Officer for advice.

## **9 Development Proposals Involving Councillors, Council Staff and the Council**

- 9.1 When a Councillor or a member of staff of the Regeneration Department or a senior officer of the Council submits a planning application or a development plan proposal for themselves or for someone else or when a planning matter is known to involve a family member, close friend or business associate of that Councillor or member of staff, they shall give prior written notification to the Monitoring Officer. Such proposals will be

reported to either the Development Control Committee or the Regeneration Committee and they will be clearly identified.

- 9.2 Applications for planning or related approvals submitted by the Council, or in which the Council has a significant interest, will be determined in accordance with the Scheme of Delegation after completion of a full written report.

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

- 10.1 When contacted by applicants or others, Councillors who sit on the Development Control Committee should confine advice to matters of procedure and encourage the person to contact a planning officer. They should explain to those lobbying that, having understood the issues raised, they will not offer an opinion until all matters have been considered at the Development Control Committee meeting. Councillors who go beyond this and openly support a particular outcome prior to the debate at Committee should consider whether their interest is a personal or prejudicial interest and declare their position at the Committee meeting.
- 10.2 When a Development Control Committee member, who is also a single Ward Councillor or Parish or Town Councillor, is canvassed/lobbied by constituents and wishes to remain impartial, he or she could ask a neighbouring Ward Councillor to speak on behalf of the constituents. If this is not possible and the Councillor feels that he, or she, must speak on behalf of constituents prior to the Committee meeting he or she will not be able to take part in the vote.
- 10.3 When a Councillor asks for a planning application to be referred to the Development Control Committee for a decision, reasons should be given in writing to the Head of Development and Building Control and recorded in the report. The request must be made within 21 days of the weekly list being published, by completing a "Call-in" Form (Appendix A).
- 10.4 Prior to the completion of any Committee report, all Councillors may contact the case officer to obtain factual or procedural information. They should not put pressure on the case officer to make a particular recommendation. They should only approach the Principal Planning Officer or Head of Development and Building Control if the case officer is unavailable or unable to help for some other reason.
- 10.5 Political group meetings shall not be used to decide how Councillors will vote on particular planning applications.

- 10.6 Councillors should not attempt to lobby Committee Members about any matter, before or after a meeting, attempt to use their status as a Councillor to influence consideration of a submission, or try to get officers to change a decision or recommendation.

## **11 Pre-application Discussions**

- 11.1 Pre-application discussions with landowners, developers and/or their agents will be conducted on the following basis:-
- (a) the discussion should only seek to establish a proposal's relationship with the Development Plan and other material considerations which may lead to an indication that it is likely, or unlikely, to be successful, or only likely to be successful if additional information is supplied or revisions undertaken;
  - (b) additional issues and material considerations may arise as a result of consultation on a formal submission and may result in an outcome different to that previously indicated;
  - (c) a planning officer must always be present to give planning advice;
  - (d) potentially contentious meetings should be attended by two officers and, a follow up letter should be sent; where clarification is needed;
  - (e) any opinion expressed by planning officers will be subject to the caveat that it is an informal view and does not bind the Planning Authority to a particular decision. Other officers should make it clear that their comments relate only to their own professional area and should not be construed as a "planning view". Officers who are members of their professional bodies should only give advice in accordance with their membership of those bodies;
  - (f) Councillors must be very careful about meeting developers as this may inhibit their ability to take part in the decision. Such meetings should only be to gather facts and a Planning Officer should be present.



## **12 Officer Reports to Committee**

- 12.1 All applications considered by the Development Control Committee and items considered by Regeneration Committee shall be the subject of full written reports from officers incorporating clear recommendations. These reports will consider national and development plan policies and guidance and representations made by statutory consultees, local residents and other interested parties. Reports will contain all the relevant materials known at the time the report is despatched to Members and updating information will be provided to Members only if there have been any significant developments or changes to the report.
- 12.2 Once the Committee papers for a meeting have been published, any subsequent information received on material planning considerations will be reported only in exceptional circumstances orally at the meeting by the Head of Development and Building Control or his or her representative.
- 12.3 Following discussion with the Chair of the Development Control Committee any subsequent information will be tabled. See also Appendix B.
- 12.4 The Council's Code of Conduct requires Councillors not to prejudice the impartiality of officers. In their relations with officers, therefore, Members should avoid placing inappropriate pressure on planning staff to achieve a desired outcome, including attempting to change decisions made under delegated authority by the Director of Regeneration.

## **13 Pre Meeting with Chair/Vice Chair**

- 13.1 Prior to each Development Control Committee meeting there will be a pre-meeting with the Chair and/or Vice Chair and the Head of Development and Building Control and/or his representative(s) for the purpose of:-
- Establishing the planning issues
  - Clarifying the information contained in the report
  - Clarifying the submitted proposals
  - Discussing the relevant Development Plan policies and other material considerations
  - Reviewing the conditions contained in the Report.

## **14 Viewing Panel**

- 14.1 Prior to the meeting of the Development Control Committee a Viewing Panel shall visit the sites of the applications to be reported to Committee.
- 14.2 The Viewing Panel shall be made up of the Chair, Vice Chair and nominated members of the Committee (usually 4). Substitutes will be allowed to stand in for Councillors on the Panel who cannot attend. Any Councillor may join the Panel at the site visits. Indeed all Members are encouraged to familiarise themselves with application sites as part of preparing themselves to determine the application.
- 14.3 The site visits should be run in accordance with the procedures laid down in Appendix C.

## **15 Public Speaking at Development Control Committee**

- 15.1 The Council has agreed that members of the public can address the Development Control Committee in relation to individual planning applications. The procedure for this is set out in Appendix D.

## **16 Determination of Planning Applications**

- 16.1 Whilst Members should bring to planning decisions a sense of the community's needs and interests, they must balance this with their obligation to remain within the constraints of planning law.
- 16.2 At no time must members make a final decision on an issue until they have considered all arguments presented at the meeting and be open to persuasion on the merits of the case. If Members are unwilling to do so, their decision might be open to legal challenge because of the common law concept of predetermination. To avoid such a situation arising, letters from Members submitted prior to the meeting (e.g. indicating the Member has formed a view on the outcome for an application) will not be read out at the Development Control Committee.
- 16.3 Members must only take account of relevant matters, e.g. sound land use planning considerations (see Appendix E) and must have regard to the appropriate Development and Local Plans and Government policy. The views of objectors must be weighed carefully against all material

considerations. The officer's report must deal specifically with these matters to enable Members to reach an informed decision.

- 16.4 Section 54A of the Town and Country Planning Act 1990 requires that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise (Appendix E).
- 16.5 In cases where the Development Control Committee wishes to approve a planning application for development which is contrary to the provisions of and prejudicial to the implementation of the development plan, the Head Development and Building Control, or his or her representative, will advise that such a decision must be referred to the full Council for a final decision.
- 16.6 The Council recognises that planning decisions are often matters of fine judgement where the balancing of considerations is difficult. Reports will be based on planning policy but Members may wish to exercise their discretion to permit an application as an exception to policy or may not agree with the recommendation. In such cases the procedural requirement is that following debate they should formally move a motion to take the place of the officer's recommendation giving valid planning reasons.
- 16.7 When dealing with planning applications Councillors should be careful to avoid even the appearance that they may have been influenced improperly or by considerations which should not be taken into account under the planning legislation and regulations. Similar circumstances must give rise to similar decisions.
- 16.8 Members and officers should be aware that improper decision making might give rise to financial sanctions against the Council. These may be imposed by the Ombudsman, courts or the Secretary of State. In some circumstances criminal prosecutions may be invoked.

## **17 Decisions Contrary to Officer Recommendations**

- 17.1 Where the Development Control Committee is minded to determine an application contrary to the officer's recommendation (whether for approval or refusal), the onus is upon the Committee to identify its reasons for the decision, which should be based on material planning considerations. The final decision on the application can therefore either:-

- (a) normally be dealt with at the meeting with a formal proposal summarised by officers and voted on at that time;
  - (b) in the event of exceptional circumstances, be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval or refusal of the application.
- 17.2 There will be a careful record kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chair will summarise the main reasons for the proposed decision so that these are clearly understood before it is put to the vote.
- 17.3 Under no circumstances is it acceptable for reasons for refusal or granting of consent (including any conditions of consent) to be left to planning officers to draft after the meeting. All such reasons and conditions shall be discussed and decided at the meeting at which the application is dealt with and adopted following professional advice from planning officers. Chair of Development Control Committee should assist this process by seeking from movers of proposals the reasons for their proposal based on District Plan requirements.
- 17.4 Similar procedures should be followed when the Regeneration Committee wishes to make decisions contrary to the Officer's recommendation.
- 17.5 A legal officer should normally attend the Committee meeting to ensure that procedures have been properly followed.

## **18 Voting at Development Control Committee**

- 18.1 In dealing with planning applications, a Committee is acting quasi-judicially (i.e. similar to a Court). In doing so, the Committee is balancing the requirements of planning law and planning policy against the needs of the community or individuals.
- 18.2 Votes must be cast by a clear show of hands following an open and frank appraisal of the merits of an application, the planning grounds which apply and the need to act promptly on planning applications. Although there are circumstances where further debate in another forum might be helpful, such deferrals should be avoided except in the most exceptional cases.

## **19 Voting by Chair**

19.1 The Chair will vote on all motions.

## **20 Second or Casting Vote of Chair**

20.1 The Council's Constitution provides for the Chair of the Development Control Committee to exercise a second or casting vote in the event of an equality of votes.

# APPENDIX A

## Councillor Call-In Form

<b>Application Reference Number:</b>	
<b>Site Address:</b>	
<b>Description of Proposal:</b>	
<b>Reason(s) for calling-in the application to Development Control Committee:</b>	
<b>Name of Ward:</b>	
<b>Signed:</b>	<b>Date:</b>

# APPENDIX B

## Representations and Submissions of Information to the Development Control Committee and Director of Regeneration

1. This Appendix only relates to applications for planning and related approvals.
2. Only representations which are material planning considerations will be taken into account in the operation of the scheme of delegation of powers to the Director of Regeneration.
3. Applications to regularise development received as a result of a complaint, will be determined in accordance with the scheme of delegation to the Director of Regeneration.
4. Subject to paragraphs 12.2. and 12.3 plans and correspondence received after the Committee papers have been published will not be reported at that meeting unless, in the opinion of the Head of Development and Building Control, it would be expedient to do so, for example, because a representation raises a new material consideration or an amended plan overcomes a reason for refusal.

# APPENDIX C

## Site Viewing Panel

1. The Viewing Panel will visit planning application sites prior to their consideration by the Development Control Committee. Any Councillor may join the Panel at the site visits.
2. The Panel (and Members) should familiarise themselves with the agenda prior to the visits.
3. The Panel (and Members) may:-
  - View physical features on the site such as the relative position of windows and trees
  - View traffic speeds and visibility splays at existing and/or proposed access points
  - Clarify matters of fact
  - View the application plans
  - See the position of proposals where they have been pegged out on site
  - Check the interrelationship with existing buildings
  - View existing townscape and/or landscape features affecting the setting of the site.
4. The Panel (and Members) will not:-
  - Pre-judge the applications
  - Discuss the merits of the applications
  - Express an opinion on the proposals
  - Attempt to influence any other Member
  - Speak to applicants / agents / landowners / objectors at the site visit about the merits of the proposal
  - Accept hospitality at the site.



# APPENDIX D

## Protocol for Public Speaking at Development Control Committee

1. The scheme for public speaking at Development Control Committee only concerns matters relating to individual planning applications contained in the Development Control Committee agenda.
2. Any person wishing to speak at the Development Control Committee should inform the Committee Clerk and state whether the speaker is in favour of, or opposed to, the planning application.
3. The period of notice shall be not later than 12 noon on the day prior to the meeting of the Development Control Committee.
4. Speaking opportunities shall be allocated on a first come, first served basis, Applications with speakers will be dealt with first. Prior to the meeting, a list detailing those applications which have resulted in requests to speak will be prepared. The list will be in the order in which speakers contact the Committee Clerk. Before commencement of the meeting the list of those wishing to speak will be circulated to members. Also applicants and third parties will be given a copy of the list. Speakers may defer to another speaker at the discretion of the Chair of the Committee.
5. The maximum time limit will be five minutes for each group of speakers, which will be divided equally between registered objectors until the 5 minutes have expired. Objectors are encouraged to get together and make a joint case by appointing a representative. The Chair or Vice Chair of the Committee may intervene, or vary the order of the speakers, or extend the time limit, in the interests of the efficiency of the meeting, or when he/she feels this will best serve public interests.
6. Speakers may include questions in the time allocated, but the Committee has no powers to require other speakers to answer the questions. Speakers must not interrupt other speakers, nor interrupt Committee debate.
7. The procedure to be followed when members of the public address the Committee shall be as follows:-
  - (a) Chair introduces the item.
  - (b) The Head of Development and Building Control or his representative updates as appropriate.

- (c) Chair invites objectors to speak followed by a representative of the Parish or Town Council (other than a District Councillor) followed by speakers for the applicant and any supporters.
  - (d) The Head of Development and Building Control or his representative clarifies as appropriate.
  - (e) Committee debates the application.
  - (f) The vote is taken.
8. In addition to the arrangements outlined above, Councillors who are not members of the Committee may be permitted by the Chair to address the Development Control Committee for five minutes in relation to planning applications in their Ward.
9. The Chair may, in exceptional circumstances, alter or amend this procedure as deemed necessary.

# APPENDIX E

## “Material” and “Non Material” Considerations

1. The relevant issues to take into consideration will vary with the nature of the proposals and the site, but may include the following:-
  - Development Plans
  - Government Guidance and Orders
  - Case Law and previous decisions
  - Highway safety and traffic
  - Noise, disturbance and smells
  - Design, appearance, layout, density
  - Conservation of buildings, trees, etc
  - Nature Conservation
  - Residential amenity (such as loss of privacy, overbearing, overshadowing)
  - Sustainability
  - Liability to flooding.

### **What issues are irrelevant in reaching planning decisions?**

2. Again they vary from case to case, but the following are usually irrelevant:-
  - Matters covered by other laws (e.g. alcohol license)
  - Private property rights (e.g. boundary or access disputes)
  - The developer’s morals or motives
  - Possible future development
  - Loss of view over other people’s land
  - Effect on value of property
  - The fact that an application may be retrospective
  - The failure of an applicant to carry out development on another site in accordance with approved plans/conditions of approval
  - Commercial competition.