



Area Planning Committee (South and West)

Date Thursday 23 January 2014
Time 2.00 pm
Venue Council Chamber, Civic Centre, Crook

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. The Minutes of the Meeting held on 12 December 2013 (Pages 1 - 6)
4. Declarations of Interest (if any)
5. Applications to be determined
 - a) 3/2013/0304 - Lilac House, South View, Hunwick, Crook (Pages 7 - 22)
Change of use from dwelling house (Use Class C3) to children's home (Use Class C2)
6. Proposed Changes to Constitution - Code of Practice for Members and Officers Dealing with Planning Matters (Pages 23 - 54)
7. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration.

Colette Longbottom
Head of Legal and Democratic Services

County Hall
Durham
15 January 2014

To: **The Members of the Area Planning Committee (South and West)**

Councillor M Dixon (Chairman)

Councillor J Buckham (Vice-Chairman)

Councillors D Bell, D Boyes, J Clare, K Davidson, E Huntington,
S Morrison, H Nicholson, A Patterson, G Richardson, L Taylor,
R Todd, C Wilson and S Zair

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DURHAM COUNTY COUNCIL

At a Meeting of **Area Planning Committee (South and West)** held in Council Chamber, Crook on **Thursday 12 December 2013 at 2.00 pm**

Present:

Councillor M Dixon (Chairman)

Members of the Committee:

Councillors D Bell, J Clare, K Davidson, J Gray, S Morrison, H Nicholson, G Richardson, L Taylor, R Todd, C Wilson and S Zair

Also Present:

Councillor A Patterson
J Byers – Area Team Leader (South and West)
A Caines – Principal Planning Officer
D Stewart – Highways Officer
C Cuskin – Legal Officer

1 Apologies for Absence

Apologies for absence were received from Councillors J Buckham and D Boyes.

2 Substitute Members

Councillor J Gray substituting for Councillor J Buckham.

3 Minutes

The Minutes of the meeting held on 21 November 2013 were agreed as a correct record and were signed by the Chairman.

4 Declarations of Interest

Councillor M Dixon declared an interest in planning application numbered 7/2013/0409/DM – Thurlow Grange, Thurlow Road, Sedgfield as he was on the Board of Livin, the applicant.

Nominations were sought for a Member of the Committee to chair the meeting during consideration of the application.

Resolved:

That Councillor Todd be elected to chair the meeting for planning application numbered 7/2013/0409/DM Thurlow Grange, Thurlow Road, Sedgfield.

5 Applications to be determined

5a 3/2013/0372 - Bondisle Playing Field, Bondisle Way, Stanhope

The Committee considered a report of the Principal Planning Officer regarding an application for improvements to field access and 33 days use of the field for parking (part retrospective) (for copy see file of Minutes).

The Principal Planning Officer gave a detailed presentation on the application which included photographs of the site. Members had visited the site that day and were familiar with the location and setting.

In presenting the report the Officer informed Members that the event was being monitored closely by the Police and the Safety Advisory Group to ensure that any unforeseen issues were dealt with. Police Officers had advised that the event was running smoothly with only one incident where there had been a build-up of traffic on the estate road which had been quickly resolved. There had been no complaints received from residents of Bondisle Way since the start of the event and feedback from visitors had been positive.

The parking area was covered with a temporary matting which would be removed at the end of January 2014 with the land restored.

Councillor Shuttleworth addressed the Committee as local Member. He was concerned with the disregard that had been shown towards the residents of Bondisle Way; they had not been consulted or asked for their views. Employees of the Railway started work as early as 7.30am on Saturdays and Sundays during the event. He was also concerned that the correct procedure for submitting a planning application had not been followed.

Mr Clement O'Donovan, the Chairman of Stanhope Town Football Club addressed the Committee. The Club was concerned at the lack of consultation by Weardale Railway, particularly following the problems that had occurred the previous year.

After an initial lack of response from the Council the Club had entered into dialogue with Culture and Sport to seek assurances from the Railway regarding protection of the football pitch and also about indemnifying the Club against any damages or other liability arising from the normal use of the pitch. These assurances had not been received.

He had heard that the event may run for a further 3 years yet the Railway had not learnt from its mistakes from 2012. Had the Railway taken the time to talk to residents and if assurances had been received regarding the football field, he believed that everyone would have been happy with the arrangements.

Mr Fairburn, General Manager of Weardale Railway commenced by explaining that the Railway was a not for profit organisation and a lot of money had been invested in establishing the Railway. He apologised to residents as it was clear from the comments made that there had not been enough consultation.

The success of the event in 2012 had exceeded expectations and he believed that appropriate steps had been put in place to improve parking and access for this year. Whilst there had been some minor issues he believed that disruption was being kept to a minimum.

C Cuskin, Legal Officer advised Members that whilst the points made by Councillor Shuttleworth and Mr O'Donovan about the planning process may be valid they were not material planning considerations to which any weight could be afforded.

D Stewart, Highways Officer stated that the Highways Authority was aware that there may be some delays, however this was a temporary event and physical improvements had been made following the problems experienced in 2012 which were deemed to be acceptable. Although residents may experience some inconvenience this was not sufficient reason to justify refusal of the application.

Councillor Davidson stated that as a not for profit organisation this event could only help to secure the Railway's future. This was not about the planning application process but hinged on the economic prospects of both the Railway and the village.

The Chairman made the point that tourism was important in County Durham and more visitors should be encouraged to visit the area. The event was of economic benefit, was being monitored closely by the Police, and Culture and Sport were satisfied that there were provisions in place to protect the football pitch, the people using it and members of the public.

These comments were endorsed by Councillor Nicholson who added that the event would showcase Weardale at its best and would help local businesses. If the applicant had consulted residents earlier in the process concerns would have been allayed.

Resolved:

That the application be approved subject to the conditions outlined in the report.

5b 6/2013/0165/DM - Land rear of 40 Front Street, Staindrop

The Committee considered a report of the Principal Planning Officer regarding an application for the erection of a detached dwelling on land to the rear of 40 Front Street, Staindrop (for copy see file of Minutes).

In discussing the report the Chairman was of the view that the concerns raised by the Parish Council had been addressed in the report. The Parish Council had stated that the cumulative effect of vehicles could not be compared to the traffic associated with the former public house as the traffic occurred during licensing hours, not school hours. However it was likely that vehicle movements at the pub would occur at any time during licensing hours, including lunchtimes.

The Highways Officer advised that the Highways Authority had no objections to the proposals. There was already traffic from the school and he agreed with the Chairman that the public house could have generated a significant number of

vehicle movements both day and night. Notwithstanding that there was consent for 5 dwellings in the public house and additional traffic generated at school times, the addition of 1 dwelling would not impact on the highway to such an extent to justify refusal of the application.

Councillor Richardson appreciated the concerns expressed by the Parish Council and advised that he could not support the application. This was a very narrow lane with a school in the vicinity. There were additional developments proposed in the location which would increase vehicle movements further. Whilst he acknowledged that the land was privately owned, it was currently being used as a car park by local residents.

Resolved:

That the application be approved subject to the conditions outlined in the report. At this point the Chairman retired from the meeting and Councillor Todd took the Chair.

5c 7/2013/0409/DM - Thurlow Grange, Thurlow Road, Sedgefield

The Committee considered a report of the Area Team Leader (South and West) regarding an application for the demolition of Thurlow Grange and the construction of 21 no. dwellings (for copy see file of Minutes).

In presenting the report the Area Team Leader advised of a proposed addition to the recommendation to include the provision of 4 affordable housing units within the Section 106 Obligation. Although all 21 homes by the social housing provider would technically be affordable this would ensure that the minimum requirement for the site was met in perpetuity.

Resolved:

That the application be approved subject to the conditions outlined in the report and to the completion of a Section 106 Obligation to secure the payment of a commuted sum in lieu of adequate on site open space provision and for the provision of 4 affordable houses in perpetuity.

Councillor Dixon returned to the meeting.

5d 7/2013/0447/DM - Geestamp Plant 1, Groat Road, Aycliffe Business Park, Newton Aycliffe

The Committee considered a report of the Area Team Leader (South and West) regarding an application for the re-development of existing industrial site to include part demolition and rebuilding of existing buildings, erection of extension to existing office and associated works (for copy see file of Minutes).

J Byers, Area Team Leader (South and West) gave a detailed presentation on the application which included photographs of the site.

The Chairman and Councillors Clare and Gray welcomed the development which was essential for the economic wellbeing of both Newton Aycliffe and the County.

Resolved:

That the application be approved subject to the conditions outlined in the report.

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Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	3/2013/0304
FULL APPLICATION DESCRIPTION:	Change of Use from dwellinghouse (Use Class C3) to childrens home (Use Class C2)
NAME OF APPLICANT:	EYES (UK) Limited
ADDRESS:	Lilac House, South View, Hunwick, Crook, County Durham, DL15 0JW
ELECTORAL DIVISION:	Willington and Hunwick
CASE OFFICER:	Joy Orr Senior Planning Officer joy.orr@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site comprises a large five bedroom detached property with detached double garage located within the village of Hunwick. The property is set back and at a higher level from the B6286 highway it fronts onto. The site has direct vehicular access onto the B6286, which is the main highway running through Hunwick, subject to a 30mph restriction at this point. The site is bordered by other residential properties and its curtilage is enclosed by perimeter walls and planting. Hunwick is predominantly residential in nature with established local amenities including two Public Houses and a Social Club, School, Church, Post Office and playing fields.
2. The site is within the settlement limits to development as defined within the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007. The application site is also within the Hunwick Conservation Area.

The Proposal

3. Planning permission is sought for the change of use of the existing dwelling house to a children's home that would provide care for up to four children between the ages of 11 and 16 years old who have emotional and behavioural difficulties. Three places would be for children on medium and long term placements, with the fourth for short term crisis provision. The children would be placed at the home from within a 25 mile radius, but are likely to come from outside County Durham. Each child would have their own private bedroom with one bedroom for staff use in addition to use of a ground floor room as an office and staff bedroom. All other rooms would be communal. The home would be administered by non-resident care staff who would work in 12 hour shifts to provide round-the-clock care.

At staff changeover there would be two staff in and two staff leaving between 08:00 and 09:30 with a similar arrangement in the evening between 20.00 and 21.30. There would also be a manager who would be on site approximately four days a week during day time working hours. All normal domestic duties, such as cooking, cleaning and gardening, would be shared by the children and the carers to replicate a typical home environment. No staff would be employed specifically for those tasks. It is proposed to run two motor vehicles from the property and there would be parking provision for 7 vehicles within the curtilage of the property for staff and visitors, which would include regulatory visits by a social worker and family visits, although the applicant suggests social worker and family visits would more often take place off-site. Children would continue to attend their existing schools full time, transported by the carers. There are no external changes proposed to the dwelling. The area immediately to the front of the dwelling would be made level to provide an additional 2 parking spaces and allow vehicles to turn within the site.

4. The application has been referred to the Planning Committee by request from the local Councillor Olwyn Gunn because of concerns relating to traffic generation and parking.

PLANNING HISTORY

5. There have been two previous applications made on the site relating to the proposed children's home. The first was submitted in August 2012 for a proposed change of use, while the second was submitted in January 2013 for a certificate of lawfulness. Both applications were however withdrawn by the applicant before determination.

PLANNING POLICY

NATIONAL POLICY

6. On March 27th 2012 the Government published the National Planning Policy Framework (NPPF). The framework establishes a presumption in favour of sustainable development. However, the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused, unless other material considerations indicate otherwise. Key aims relevant to this proposal include widening the choice of high quality homes; recognising that the planning system can play an important role in creating healthy, inclusive communities; ensuring highway impacts are acceptable; and conserving and enhancing the historic environment.

The above represents a summary of the NPPF considered most relevant the full text may be accessed at: <http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

LOCAL PLAN POLICY:

7. The following saved policies of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007 are considered to be consistent with the NPPF and can therefore be given weight in the determination of this application:

Policy GD1 – General Development Criteria. All new development and redevelopment within the district should contribute to the quality and built environment of the surrounding area and includes a number of criteria in respect of impact on the character and appearance of the surrounding area; avoiding conflict with adjoining uses; and highways impacts.

Policy H3 – Distribution of Development. New development will be redirected to those towns and villages best able to support it. Within the limits to development of towns and villages, as shown on the Proposals Map, development will be allowed provided it meets the criteria set down in Policy GD1 and conforms to other policies within the plan. Hunwick is listed as one of those villages where development will be allowed.

Policy T1 – General Highways Policy. All developments which generate additional traffic will be required to fulfil Policy GD1 and provide adequate access to the development; not exceed the capacity of the local road network; and be capable of access by public transport works.

Policy BE5/BE6 - Conservation Areas. New Development in Conservation Areas will only be permitted if they preserve or enhance the character of the area in terms of scale, bulk, height, materials, colour and design; have appropriate materials; and satisfy the objectives of Policy GD1 of the plan.

Policy H20 – Alternative Uses within Residential Areas. Within existing residential areas various uses, which include residential institutions, may be acceptable having regards to the need to safeguard existing residential amenity; the scale and character of the use; potential for expansion; and potential traffic and parking requirements.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

8. *The Highway Authority* has no objection and is of the view that there would be adequate levels of parking provision within the property, and the potential level of vehicular movements and access/egress arrangements onto the B6286 would not create highway safety concerns sufficient to sustain a highway refusal.
9. *Durham Constabulary* has expressed concerns that the proposal may lead to additional demands on the police if children go missing, and due to the strength of negative feeling within the community are of the view that the facility is likely to have a negative impact in driving up the fear of crime and consequently would undermine the concept of promoting cohesive communities.

INTERNAL CONSULTEE RESPONSES:

10. *Children and Adult Services* has objected to the proposal for a number of reasons including lack of local need for such facilities; the impact importing children from other local authority areas has on local services; potential problems with integration of the children into a neighbourhood with such a high level of objection; and concerns if such facilities are not well managed.
11. *Environmental Health* has no objection in respect of potential noise and light impacts.

PUBLIC RESPONSES:

12. The application has been publicised by site notice and neighbour letters. 79 letters of objection have been received. Because of the large number of objections and because many of the points raised have been similar, these have been grouped and

summarised below, however full records of all observations received are available on the application file and on public access:

<http://planning.wearvalley.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=7594>

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- Questions have been asked about the suitability of the location for a children's home within a small village with limited facilities to keep them occupied and near a school, nursery and old people's bungalows. There are also concerns about noise disturbance and loss of privacy for nearby neighbouring properties.
- Many concerns have been expressed that the facility would lead to an increase in crime and antisocial behaviour, or that local residents will live in constant fear of such activities, which will undermine community cohesion and impact negatively on the character of the area, including that of the Conservation Area. There is also concern about the potential effect on property values as a result.
- There are concerns about the potential difficulty of integrating the children into the local community because of the strength of negative feeling against the facility. There are also concerns that the children from the home would conflict with local children or negatively influence them into partaking in unlawful and anti-social activity.
- It is felt that the proposal would significantly increase the number of vehicle movements to/from the property compared to what might be reasonably expected as a normal dwelling, which would increase the number of dangerous manoeuvres on the highway to the detriment of the safety and convenience of users of the highway.
- The proposal is not considered to represent a sustainable form of development because of the reliance and distance of car journeys to schools, activities and family outside the local area.
- There is no need for the facility in County Durham and there is evidence that suggests such facilities place demands on the emergency services. There are also concerns about whether the facility will be properly managed and reference has been made to other legislation and controls regarding the operation of children's homes and ministerial concerns over the concept of children being placed in care outside of their local authority area.
- There are also concerns that if approved the property could change use to other more problematic types of institutions within the same use class without the need for planning permission.

13. MP Pat Glass has lodged two objection letters against the proposal. These letters raise concerns about the pressure on local services and whether such a private run facility can be effectively managed. The qualifications of the staff and general standards of care in private facilities are also questioned. Reference is made to current Government consultation on potential changes which will limit local authority placements to 20 miles of their home authority, as well as requirements to introduce a risk assessment of the area to include some of the services that the children might require. It is felt these Government proposals could potentially be problematic for Lilac House and how it intends to operate.

APPLICANTS STATEMENT:

14. The NPPF places a duty on the Council to meet the housing, business and other development needs of an area. Children in care are a hidden and often neglected sector of our society and our future.

15. The child protection system is in crisis and often fails to meet the needs of these children. Currently, there is a national shortage of approximately 10,000 placements for children who are known to the authorities and are without a safe place to live.

16. Eyes (UK) Ltd has over 21 years of social work experience, a financially viable business plan and an exceptional care plan which will allow us to provide a healthy, caring and stable environment for up to four children at any one time.
17. The housing needs of this sector are equally as important as making provision for market housing, affordable housing and housing for the elderly. The NPPF recognises that healthy vibrant communities which meet the needs of present and future generations are a key component of our social wellbeing and sustainable development.
18. The residential care home will be in keeping with the surrounding residential area in terms of character and there will be no change in the appearance of the house. The business will operate along the lines of a family home and will not disturb or conflict with its surroundings. There is a safe access directly onto the B6286 and ample parking on site hence no highway objection has been raised.
19. The Local Plan, the starting point for decision making, aims to maintain and improve the health, community and social service provision in the district. It follows this facility will be a valuable local asset offering quality of care to children in need.
20. The objections lodged indicate that some people have not properly understood the nature of the scheme. The Applicants acknowledge that some facilities are poorly run and can cause problems within the community. But it is the applicants desire to bring quality to this sector which is one of the driving forces behind this scheme.
21. Many of the objectors have raised the fear of increased crime and anti-social behaviour in the area. This is capable of being a material planning consideration but only if it is objectively likely to occur. The Chief Inspector Partnerships has confirmed that he is not aware of any analysis linking facilities such as this one with increased anti-social behaviour and crime (letter 9 April 2013).
22. There are similar facilities in the County in locations such as Toft Hill, Cockfield, Staindrop and Wolsingham which provide good quality service to children who are at risk. The placement of children in rural areas is a positive element of their care programme and in land use planning terms is not controversial.
23. The day to day management of the facility will be overseen by Ofsted and is not a planning matter.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file.

PLANNING CONSIDERATIONS AND ASSESSMENT

24. Having regard to the requirements of section 38(6) of the Planning and Compulsory Purchase Act 2004 development plan policies and relevant guidance, and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of development; impact on the character and appearance of the area; impact on the amenity of neighbours; and highway safety.

Principle of development

25. Lilac House is a substantial 5 bedroom detached house located within the development limits of Hunwick. Its lawful use is as a dwellinghouse as defined in Class C3 of the Use Classes Order.
26. The proposed occupation by 4 children with up to 3 staff present for most of the time would equate reasonably with the potential size of household that could currently occupy the dwelling and there are many similarities in how such children's homes operate to a normal family home in that children have private bedrooms, continue to go to full time education at their existing school and partake in group activities within and outside the home. However, the case of *North Devon DC v FSS and Southern Childcare Ltd* [2003] EWHC 157 Admin provides authority for the view that use as a care home for children, where carers are non-resident, falls within Class C2, hence the need to apply for a change of use of the property from a dwellinghouse to a children's home.
27. The proposal involves reuse of an existing residential property within the development limits of Hunwick. The site would have had vehicle movements associated with the residential use of the property. The lack of facilities in the area, recreational or otherwise, is a difficulty faced by anyone in Hunwick and while a larger settlement would have more flexibility in terms of access to services and contact with the local community, Hunwick is listed in Wear Valley Local Plan Policy H3 as being a suitable location for new development. Hunwick has its own playing fields, with children's play area, and it lies on a regular bus service between Durham and Bishop Auckland, which could be used by staff or to access facilities further afield if needed. With the small scale of the proposal, limited staff numbers and allowance within the development plan for development in Hunwick, the proposal is not sufficiently in conflict with the locational aims of the NPPF to warrant refusal on sustainability grounds.
28. In addition, Policy H20 of the Wear Valley District Local Plan states that residential institutions (Class C2) may be acceptable within existing residential areas where they fulfil criteria which safeguard the amenities and general living environment of the existing residents within the area, and are appropriate in their scale and traffic/parking impacts. The scale of the proposal, being similar to the size of household that could be accommodated at the dwelling, is considered to be appropriate to the site and locality and given the location of the proposal accords with Wear Valley Local Plan Policy H3 and the locational aims of the NPPF, the merits of the proposal turn principally on the detailed issues of impact on the surrounding area, amenity and highway safety.
29. Representations, including from the Council's Children's and Adult's Services and MP Pat Glass, have questioned the need for the facility and raised concerns about the potential problems of taking placements from outside the local authority area; concerns for the safety of the children and their integration into the community; the standards of care in privately run facilities; as well as potential government proposals for changes to the child care and protection system. However, and notwithstanding the expertise behind some of these views, these are matters governing the regulation and licensing of children's care homes, which are outside the control of the planning system, subject to separate legislation and regulation, and therefore not material planning considerations which should be afforded any weight in the determination of the application.

Impact on the character and appearance of the area

30. The property lies within the Hunwick Conservation Area and therefore regard has to be paid to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires the local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the Hunwick Conservation Area.
31. The existing character is residential in nature and the property fronts onto the main road passing through the village. The majority of objections received relate to concerns about the potential effect of the proposed use on this general residential character of Hunwick Village, particularly in respect of the level of vehicular activity and perceived potential for the use to increase levels of crime and anti-social behaviour, or the fear of such activity in the area, which it is claimed would fundamentally change the character of the area.
32. It is noted that there would be no signage or external alterations to the dwelling and only minor works would be required to level an area of hardstanding to the front of the dwelling to provide 2 additional parking spaces and to enable vehicles to turn within the property. The works would not have a detrimental visual impact on the surrounding area. The presence of up to 7 cars within the property at times would be more than would normally be expected at a residential property, but their presence would not be prominent when viewed from outside the site.
33. As there would be no physical changes to the outside of the property, which would materially distinguish it from other houses within the area, and having regard to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, it is considered that the proposal would preserve the character and appearance of the Hunwick Conservation Area in this respect.
34. In land use terms, one of the most likely differences between the proposed use and a dwellinghouse would be an increase in the number of comings to and goings from the property. The figures produced by the applicant suggest around 16 vehicle movements a day, while those produced by objectors suggest up to 36 a day.
35. Predicting the number of vehicle trips is not an exact science and there is a margin of error involved. In the Highway Authority's view the applicant's figures are a better balanced assessment of the range of potential reasons for vehicle movements from the site, particularly having regard to the potential for shared trips. Around 16 trips in one day would be above normal day-to-day usage of an average dwellinghouse, which might be approximately 10. However, Lilac House is larger than an average dwellinghouse with ample parking and garaging space. It is also located on the main road through the village where the majority of traffic movements are experienced. As a dwelling, it could attract a family with a high-level of car ownership and usage. It is considered that for such a property to be in use as a children's home attracting around 16 vehicle movements a day from the main road in the village, or even allowing for an increase to around 20 vehicle movements a day, it would not be likely to have any materially harmful effect upon the character of this specific property or the area when spread over the course of the day. Nevertheless, a condition restricting the use and numbers of children to only that proposed and no other use within the same C2 use class (schools, hospitals, nursing homes) would be appropriate in this case, as other institutional uses may have a different character and vehicle movements requiring further planning consideration.
36. Most objectors have raised concerns about the integration of the proposal into the community and that the proposal could lead to increased crime and anti-social

behaviour, placing a strain on police and other local services as a result. It is notable that Durham Constabulary and the Council's Children's and Adult Services have also made comments reflecting some of these concerns. There are however, many assumptions made in these comments which are based on a view that the children will not be properly managed. The management and regulation of children's homes and child protection is a matter for Ofsted and other government legislation under The Children Act. These are not land use considerations and therefore any comments made on the basis of a service not operating properly should not be afforded any weight in the determination of the application.

37. It is accepted that fear of increased crime is capable of being a material planning consideration in determining the planning merits of a scheme, as is clear from the West Midlands Probation Committee -v- SSE appeal case, which concerned a bail and probation hostel for criminals where numerous visits by the police and fear of crime was held to diminish the amenity of the area. In addition, paragraph 58 of the NPPF states that *"planning policies and decisions should aim to ensure that developments create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion"*.
38. Lilac House would not however be a home for criminals, nor would it be for persons with drug/alcohol problems, mental disorders, or any other secure residential institution falling under the separate Use Class C2a.
39. Objections have referred to data obtained from Greater Manchester and Durham relating to the frequency of police call-outs to residential institutions, however the nature of the institutions the data refers to and the type of incidents involved is not clear and cannot therefore be directly linked to the application proposal as an objective assessment or qualified piece of research. The data cannot therefore be given any significant weight in concluding that this proposal will lead directly to increases in recorded crime attributable directly to the operation of a children's home at Lilac House.
40. The comments received directly from Durham Constabulary on this subject should carry far greater weight and are particularly relevant to considering the land use merits of the proposal.
41. In this respect, while Durham Constabulary have raised concerns about the impact of this proposal on community cohesion, notably in their comments they have also said that while some children's homes generate some demand on their service there are others that have no incidents at all and therefore it would be wrong to say that all children's homes generate significant demand. In their experience it is the individual child rather than the home which is the key and most of the incidents that are reported are said to be centred on a relatively small number of individuals. Further, it is said that whilst there are reports of anti-social behaviour most of the incidents are actually missing from home reports. In addition, in their comments made during the previous application for a certificate of lawfulness at Lilac House, Durham Constabulary stated they were not aware of any analysis having been carried out that could support an absolute assertion that change of use of Lilac House to a children's home would generate crime and anti-social behaviour and increase fear of crime.
42. It is therefore an acknowledgment by Durham Constabulary that children's homes by their nature should not inherently lead to increased crime and disorder. It is also considered relevant that Durham Constabulary had no objection to an application in Cockfield in 2010 for a larger children's home of 8 resident children, which is further

indication that there is no default position that it is an inherent character of a children's care home to generate crime and anti-social behaviour and place unacceptable burdens on the police service.

43. Accordingly, having assessed all of the relevant factors, it is considered that the fears expressed by objectors are attributable to concerns about individual behaviour, possibly linked to management/supervision issues (not material planning considerations which should be afforded any weight in the determination of the application). The likelihood of regular police visits to the property, particularly in respect of crime and disorder, is considered to be low. It would also not be possible, as feared by some objectors, for the use to change to any kind of secure residential institution (prisons, detention centres, young offenders, secure hospitals) without the need for planning permission as those institutions fall within a separate C2a use class. Concerns expressed in the objections about potential impacts on property values are not material planning considerations. Accordingly, notwithstanding NPPF paragraph 58, it is considered that because there is no established evidence of any link between children's care homes and increased crime/anti-social behaviour, the fears of crime expressed in this application are based on something that is objectively less likely to occur, and therefore the fear of crime in this case is a material consideration which does not carry any weight.
44. Taking all these matters into account, it is considered that the change of use of Lilac House to a children's care home for 4 children would not have an adverse impact on the character and general amenity of the area, and would preserve the character and appearance of the conservation area. The proposal therefore accords with Wear Valley Local Plan policies GD1, H20, BE5 and BE6.

Residential Amenity

45. A number of objections have been received in relation to potential increased noise, disturbance and loss of privacy to neighbouring properties.
46. Lilac House is a detached house set in enclosed grounds. The main amenity area is to the rear (north). There are neighbouring residential properties to the east and west. The properties to the west are at a slightly higher level.
47. Apart from additional vehicle movements, it is considered that the proposed use of the property would not be materially different to its use as a dwellinghouse. Window relationships already exist and there would be no differences in how the concealed rear amenity area could be used as a dwellinghouse. It is also not uncommon for one room in a dwellinghouse to be used as an office/study and, bearing in mind the size of this particular property, the use of one room as an office would be most unlikely to have any material effect upon its character or effect on neighbours.
48. While the number of vehicle movements would be greater than normal, a property of this size could attract a family with a high level of car ownership. The timing of the majority of vehicle movements would coincide with normal daily activity related to work and school journeys, as well as leisure and shopping trips in the afternoon and evening. The evening staff changeover would occur between the hours of 20.00-21.30, but would only involve two vehicles in and two vehicles out spread over this time. The timing of the evening changeover could be controlled by a condition to ensure it takes place as stated and no later. The Highway Authority considers the parking and manoeuvring arrangements within the site to be acceptable and it is unlikely that manoeuvring will create nuisance through shunting of vehicles. Therefore, the number and timing of vehicle movements is considered acceptable in respect of the impact on the amenity of neighbours.

49. The fact that the carers would not be permanently resident may have some effect on the way they relate to the children in their care and their ability to control the actions of those children. However, as in the preceding section, the occasional actions of some individuals and effectiveness of management arrangements are not material planning considerations which should be afforded any weight in the determination of the application, and the facility would not house criminals, or children with mental disorders that would be more difficult to manage. The Council's environmental Health Section has not raised any concerns about noise impact and officers are satisfied that there would be no unacceptable impact on the amenity of surrounding properties due to noise from the proposed development.
50. It is therefore considered that the proposal is compatible within this residential area and would not have an unacceptable impact on the living conditions of neighbours in respect of loss of privacy, noise or general disturbance. The proposal accords with Wear Valley Local Plan Policies GD1 and H20.

Highway Safety

51. The Highway Authority has considered in detail highways submissions from the applicant and objectors.
52. In the objections it is suggested that parking at the property will be inadequate and would lead to parking on the highway, to the detriment of highway safety. The Highway Authority has advised that they have contacted Traffic & Community Engagement colleagues in DCC Neighbourhood Services to ascertain if highway or parking issues have been brought to their attention in the operation of children's homes in the district. They have confirmed they are not aware of such issues arising. The Highway Authority has also visited locations of comparable children's home sites but have not observed parking problems attributable to the operation of the homes.
53. An amended plan now depicts five parking spaces within the curtilage of the property and a further two in the detached garage. The consensus from all parties is that the likely maximum parking demand on-site is five vehicles. As the proposal exceeds the parking provision to meet the maximum predicted parking demand it cannot therefore be concluded that the proposal would create associated parking demand on the B6286 highway. A condition to ensure the garage and hardstanding areas are used for no other purpose would be appropriate in this respect.
54. In respect of vehicle manoeuvres onto the B6286, objections have expressed concern that some vehicles may be reversed from the property to the detriment of highway safety. This can however occur at the site currently and such potential exists at other properties on the B6286, and many properties elsewhere. This is an important factor in considering whether the cumulative impact of the proposal would be severe in comparison to the existing situation. There would however be provision made for vehicles to turn within the site and exit the site in forward gear, which would alleviate the need to reverse onto the B6286. The Highways Authority advise that the B6286 two way average annual daily traffic flow is in the region of 4000 vehicles and that this is not a high flow in relative terms for a B class road. 'Manual for Streets' research indicates that direct driveways leading from roads with flows of up to 10,000 vehicles has not created highway issues. The B6286 road through Hunwick has a traffic flow less than half that figure so it follows that vehicle manoeuvres onto the B6286 and the number of vehicle movements from the proposed use should not create severe highway issues or exceed highway capacity.

55. Notwithstanding the level of vehicle flows on the B6286, it is acknowledged that there are longstanding local concerns about vehicle speed through the village predating submission of this application, hence the traffic calming measures that have been introduced. The recorded 85th percentile vehicle speeds are slightly above the 30mph speed limit, but the Highway Authority advise that these results are not untypical of classified roads through small settlements in rural parts of the County and indeed speeds can be higher elsewhere, which suggests the traffic calming measures have some effect. It is the Highway Authority's view that recorded traffic speeds on the adjacent B6286 road could not be expected to materially alter as a result of the proposed change of use of a single dwelling. Traffic speeds are naturally a legitimate concern in any community and such issues can be, and are, dealt with separately by the Council's Traffic and Community Engagement Manager, outside of the planning process. In any event, the fact there have only been 3 personal injury accident records in the 5 year period ending August 2013, the closest being approximately 300m south west of the application site with the others further away, at approximately 330m and 390m, and none in the vicinity of the site, suggest this is not a high risk area. Traffic speeds and accidents on this stretch of the B6286 are not therefore matters that carry any weight in consideration of the planning application and are not material to the amount of movements and manoeuvres into and out of the site.
56. Based on the assessment of vehicle movements, parking provision, traffic flows and vehicle speeds, and that the Highway Authority have no objection to the proposal, it is considered that the proposal would not lead to a severe cumulative residual impact on highway safety. The proposal therefore accords with Wear Valley Local Plan Policies GD1 and H20 and the advice of the NPPF in this respect.

CONCLUSION

57. The proposal is for the reuse of an existing dwelling located within the development limits of Hunwick and therefore accords with Wear Valley Local Plan Policy H3 and the locational aims of the NPPF.
58. The proposal has raised emotive issues and a range of views have been received from within the community. Despite many concerns expressed about the proposal increasing fear of crime and affecting community cohesion, there is no evidence to suggest that the proposal should inherently lead to increased crime and disorder. Despite the strength of such feelings, these fears are therefore a material consideration which should not carry any weight in the consideration of this proposal. Views on the need for the facility, placement arrangements, qualifications of staff, standard of care, child safety and potential changes in other government legislation are not material planning considerations which should be afforded any weight in the determination of the application.
59. There would be no physical changes to the property to differentiate it from other residential properties and the scale of the proposal, its character, and associated vehicle movements would not unacceptably harm the character or appearance of the surrounding area and Hunwick Conservation Area, nor would they have an unacceptable impact on the residential amenity of neighbours.
60. The Highway Authority considers the proposed parking arrangements within the site, predicted numbers of vehicle movements and manoeuvring onto the B6286 to be acceptable and it is considered that the proposal would not lead to a severe cumulative residual impact on highway safety.

61. Subject to the suggested conditions, the proposed use is considered to be compatible with the surrounding area and in accordance with Wear Valley Local Plan policies H3, GD1, T1, BE5, BE6 and H20.

62. All representations have been considered, however, on balance, the issues raised are not considered to be sufficient to warrant refusal of the application and it is felt that the proposal is acceptable in planning terms.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing No:	Description:	Date Received:
	Site location plan	19 August 2013
	Floor plans	19 August 2013
TSC217/01	Car parking layout	25 November 2013

Reason: To define the consent and ensure that a satisfactory form of development is obtained.

3. Notwithstanding the provisions of the Town and Country Planning (Use Classes Order) 1987 (as amended) the use hereby approved shall be restricted to that of a children's care home for children between the age of 11 and 17 and no other purpose within Use Class C2.

Reason: In the interests of residential amenity and highway safety. In accordance with policies GD1, T1 and H20 of the Wear Valley Local Plan.

4. The maximum number of children living within the site at any one time shall not exceed 4.

Reason: In the interests of residential amenity and highway safety. In accordance with policies GD1 and H20 of the Wear Valley Local Plan.

5. There shall be no vehicle movements associated with staff changeover before 07.30 and after 22.00 on any day.

Reason: In the interests of residential amenity. In accordance with policies GD1 and H20 of the Wear Valley Local Plan.

6. Before the use hereby approved is commenced the works to provide 2 parking spaces to the front of the dwelling, as detailed in plan TSC217/01 shall be completed and thereafter the garaging and hardstanding within the property shall be available at all times for the parking of 7 motor vehicles.

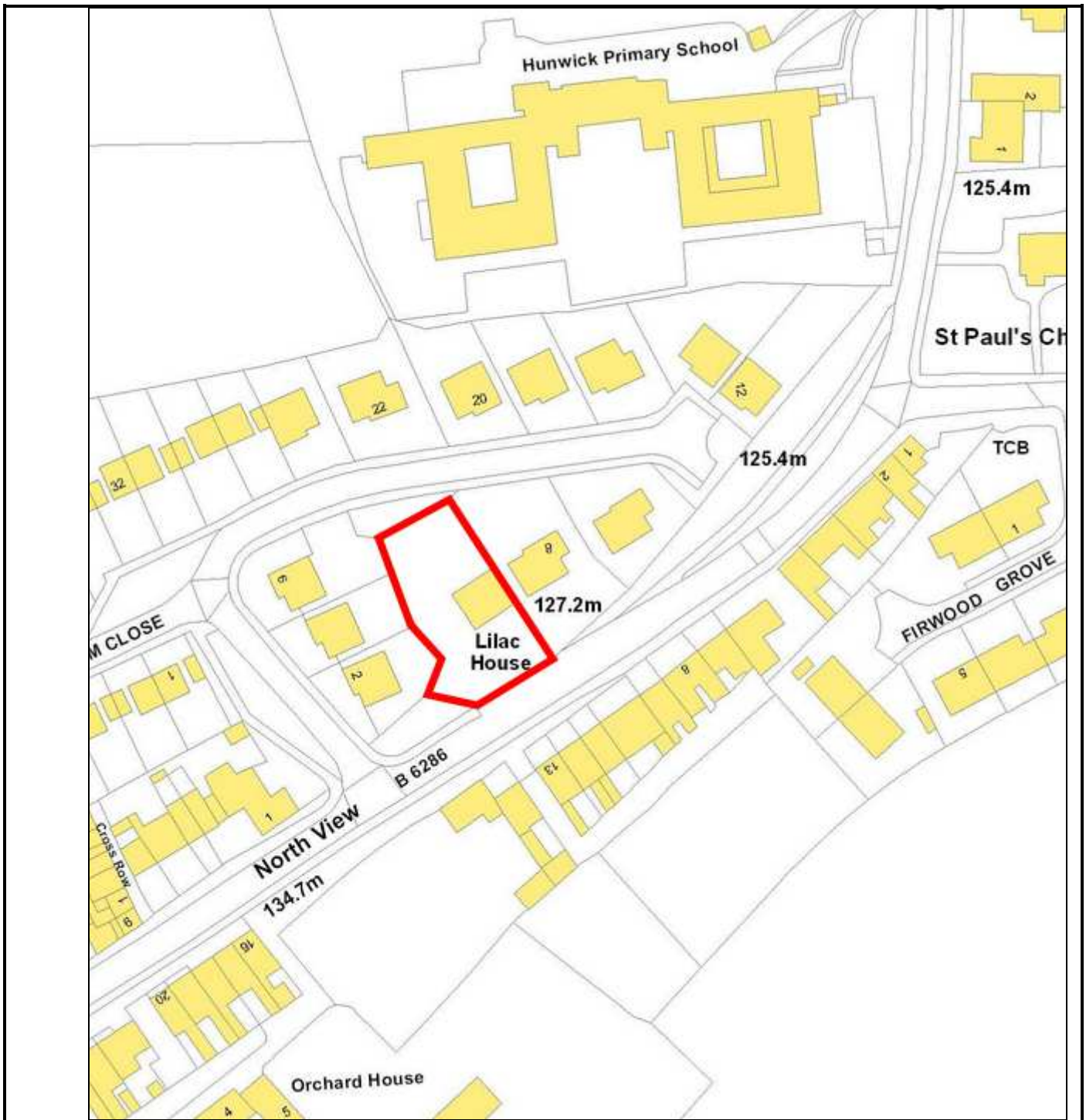
Reason: To ensure that adequate parking provision is made within the site for vehicles in the interests of highway safety. In accordance with policies GD1 and H20 of the Wear Valley Local Plan.

STATEMENT OF POSITIVE AND PROACTIVE WORKING

In arriving at the recommendation to approve the application the Local Planning Authority has assessed the proposal against the NPPF and the Development Plan in the most efficient way to ensure a positive outcome through appropriate and proportionate engagement with the applicant and carefully weighing up the representations received.

BACKGROUND PAPERS

- Submitted Application Forms, Plans and Statements
- National Planning Policy Framework
- Consultee comments
- Public Consultation Responses



Change of Use from dwellinghouse (Use Class C3) to childrens home (Use Class C2)

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Lilac House, South View,
Hunwick, County Durham

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Area Planning Committee (South and West)

23 January 2014

Proposed Changes to Constitution – Code of Practice for Members and Officers Dealing with Planning Matters



Report of Head of Legal and Democratic Services

Purpose of the Report

1. To propose changes to Paragraphs 1.6, 3.2, 10 and 11 of the current Code of Practice to reflect updated guidance published by the Local Government Association relating to probity in planning.

Background

2. The Council's constitution includes a section entitled "Code of Practice for Members and Officers Dealing with Planning Matters". The Code was largely based upon the Local Government Association's Guidance Note of Good Practice issued in 2002. The latest guidance from the LGA, a copy of which is attached at Appendix 2, supersedes the 2002 publication. I have therefore reviewed the Council's current Code of Practice to identify whether any changes are required as a result of the new guidance.
3. The guidance on the conduct of work as agents for individuals pursuing planning matters within the authority area has been strengthened and recommends that officers and serving Councillors should not act as agents even if they are not involved in the decision making process. Paragraph 3.6 of our current Code implies that Members would not be restricted from acting professionally as agents for persons pursuing planning matters within Durham provided they played no part in the decision making process for those proposals. The change in the Code is recommended to reflect the more restrictive guidance which might be attributable to conflict situations reported nationally within the last year which attracted considerable media attention.
4. It is worthwhile clarifying our current rules on site visits whilst the Code is being revised. The LGA guidance suggests that site visits should be less common than may currently be the case in Durham and revised wording would reflect that they should not be regarded as standard practice for each application.
5. The new guidance also clarified that new documents should not be circulated at Planning Committee Meetings by supporters and objectors because of the risk that Members may not have sufficient

opportunity to give them proper consideration and officers may not have sufficient opportunity to check their accuracy or advise upon them. The Council's current practice is to circulate to members of the public a guide on procedures for speaking at Planning Committees and the detail is not included in the Code of Practice. This supplementary guidance will be updated to clarify that circulation of documents will not be permitted.

The LGA guidance "Probity in Planning" was considered by the Council's Standards Committee on 25 June 2013 and the Committee endorsed the proposal that Council be recommended to make these proposed amendments in order to comply more closely with the updated guidance. A copy of the proposed amended Code of Practice is attached at Appendix 3. Constitution Working Group considered the proposals on 8th October 2013 and requested that the views of Planning Committee be sought, and if the committee was agreeable to make the recommendations to Council then this be undertaken without being referred back to the Group.

7. Whilst reviewing the Code it is considered prudent to amend paragraph 3.2. The Localism Act has cast doubt on whether the previous exception permitting members with prejudicial interests to speak at Committee when members of the public can speak has been retained under the revised Code of conduct. It is therefore no longer appropriate to state this right exists until this point has been tested and clarified.

Recommendation

8. It is recommended that the Committee note the proposed changes to the Code of Practice for Members and Officers Dealing with Planning Matters which amendments will be presented to Council to approve the necessary change to the Constitution.

Contact:	David Taylor	Tel: 03000 269727
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Appendix 1: Implications

Finance – None

Staffing – None

Risk – Compliance with LGA guidance strengthens the Council's position in the event of criticism or challenge.

Equality and Diversity / Public Sector Equality Duty – None

Accommodation - None

Crime and Disorder - None

Human Rights - None

Consultation – The proposal has been submitted to and approved by Standards Committee.

Procurement - None

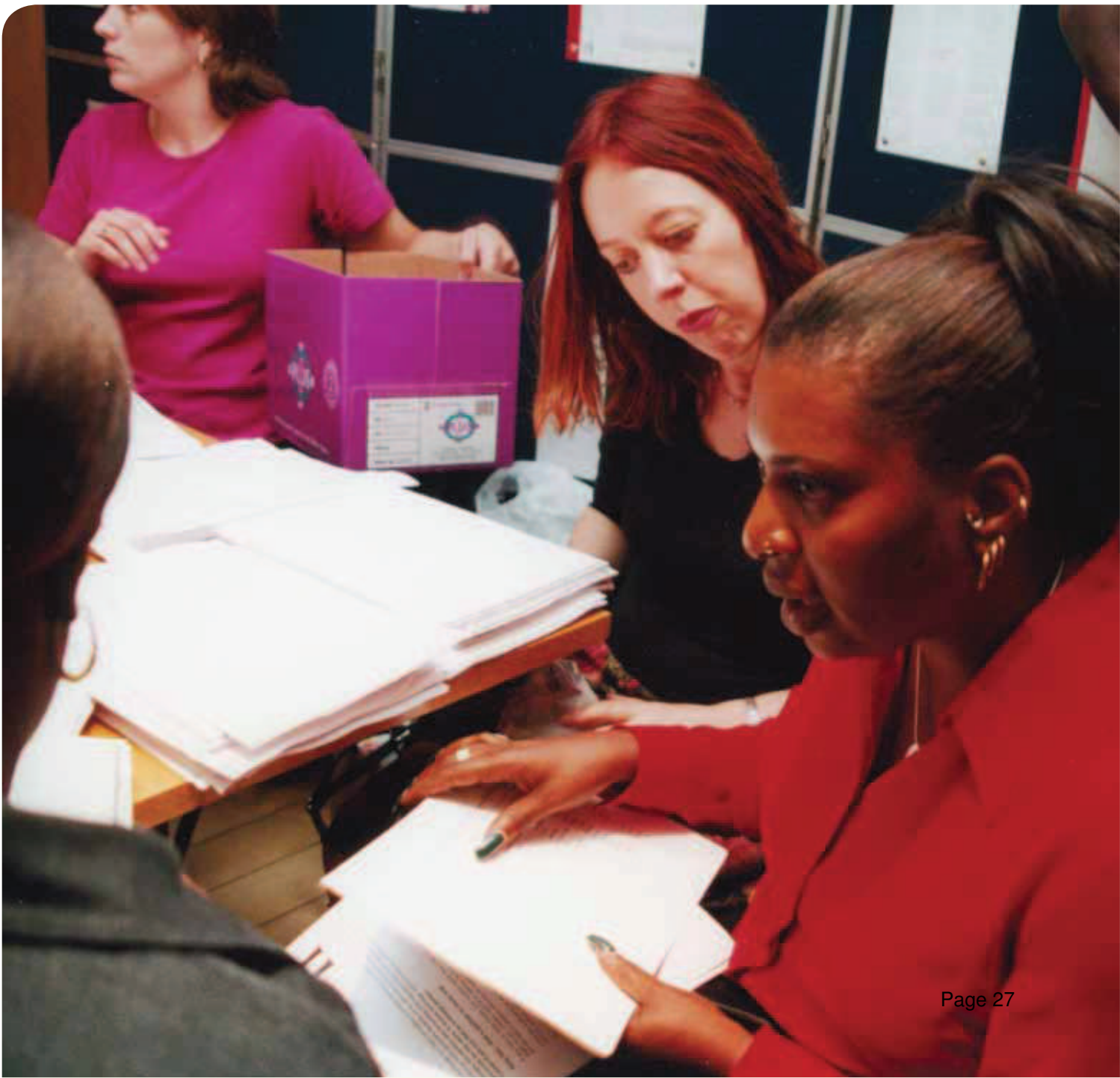
Disability Issues – None

Legal Implications – Contained in the Report.

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Probity in planning

for councillors and officers



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This publication was prepared by Trevor Roberts Associates for the Planning Advisory Service. It also includes contributions from officers from various councils.

April 2013

Foreword

This 2013 update to the 2009 version of the Local Government Association's Probity in Planning guide reflects changes introduced by the Localism Act 2011. It clarifies how councillors can get involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

This guide has been written for officers and councillors involved in planning. Councillors should also be familiar with their own codes of conduct and guidance.

This guide is not intended to nor does it constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity.

Introduction

Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.

The planning system works best when officers and councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.

Planning decisions involve balancing many competing interests. In doing this, decision makers need an ethos of decision-making in the wider public interest on what can be controversial proposals.

It is recommended that councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

Background

In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today's place-shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.

This guidance is intended to reinforce councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges.

Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.

Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.

One of the key aims of the planning system is to balance private interests in the development of land against the wider 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. Opposing views are often strongly held by those involved.

Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.

The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

This guidance is not intended to be prescriptive. Local circumstances may provide reasons for local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

This guidance refers mainly to the actions of a local authority planning committee as the principal decision-making forum on planning matters. It is recognised, however, that authorities have a range of forms of decision-making: officer delegations; area committees; planning boards, and full council.

This guidance applies equally to these alternative forms of decision-making. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local plans and other policy documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in planning enforcement cases or the making of compulsory purchase orders.

The general role and conduct of councillors and officers

Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst 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 will be based upon mutual trust, understanding and respect of each other's positions.

Both councillors and officers are guided by codes of conduct. The 2011 Act sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. All councils had to adopt a local code by August 2012.

The adopted code should be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

It should embrace the standards central to the preservation of an ethical approach to council business, including the need to register and disclose interests, as well as appropriate relationships with other councillors, staff, and the public. Many local authorities have adopted their own, separate codes relating specifically to planning although these should be cross referenced with the substantive code of conduct for the council.

Staff who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. Many authorities will have adopted a code of conduct for employees and incorporated those or equivalent rules of conduct into the contracts of employment of employees.

In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. Any councillor or officer receiving any such offers over and above an agreed nominal value should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined. Guidance on these issues for both councillors and officers should be included in the local code of conduct

Employees must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

Officers and serving councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Ombudsman on grounds of maladministration or a breach of the authority's code.

Finally, as planning can sometimes appear to be complex and as there are currently many changes in planning taking place, the LGA endorses the good practice of many councils which ensures that their councillors receive training on planning when first appointed to the planning committee or local plan steering group, and regularly thereafter. The Planning Advisory Service (PAS) can provide training to councillors (contact pas@local.gov.uk).

Registration and disclosure of interests

Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

For full guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013. (This guidance note does not seek to replicate the detailed information contained within the DCLG note). Advice should always be sought from the council's monitoring officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

The provisions of the Act seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate.

Each council's code of conduct should establish what interests need to be disclosed. All disclosable interests should be registered and a register maintained by the council's monitoring officer and made available to the public. Councillors should also disclose that interest orally at the committee meeting when it relates to an item under discussion.

A councillor must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the councillor becoming aware of such changes.

A disclosable pecuniary interest relating to an item under discussion requires the withdrawal of the councillor from the committee. In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business.

If a councillor has a (non-pecuniary) personal interest, he or she should disclose that interest, but then may speak and vote on that particular item. This includes being a member of an outside body; mere membership of another body does not constitute an interest requiring such a prohibition.

It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at planning committee he or she should raise this with their monitoring officer as soon as possible.

See Appendix for a flowchart of how councillors' interests should be handled.

Predisposition, predetermination, or bias

Members of a planning committee, Local Plan steering group (or full Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is alright, the former is not and may result in a Court quashing such planning decisions.

Section 25 of the Act also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased.

For example, a councillor who states "Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."

If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter.

This would apply to any member of the planning committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward). If the Council rules allow substitutes to the meeting, this could be an appropriate option.

Authorities will usually have a cabinet/ executive member responsible for development and planning. This councillor is able to be a member of the planning committee. Leading members of a local authority, who have participated in the development of planning policies and proposals, need not and should not, on that ground and in the interests of the good conduct of business, normally exclude themselves from decision making committees.

Development proposals submitted by councillors and officers, and council development

Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals.

Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local planning protocol or code of good practice should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration
- a system should be devised to identify and manage such proposals
- the council's monitoring officer should be informed of such proposals
- such proposals should be reported to the planning committee and not dealt with by officers under delegated powers.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as applicant, should also not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers.

Lobbying of and by councillors

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

Lobbying, however, 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.

As noted earlier in this guidance note, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to 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 could restrict themselves to giving advice about the process and what can and can't be taken into account.

Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at committee.

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority's code of conduct for planning matters.

It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.

A local code on planning should also address the following more specific issues about lobbying:

- Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- Planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors.
- Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
- Call-in procedures, whereby councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern.

As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

Pre-application discussions

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. Now, through the Localism Act and previously the Audit Commission, the LGA and PAS recognise that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and helps to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' approach.

The Localism Act, particularly S25, by endorsing this approach, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken. In addition to any specific local circumstances, guidelines should include the following:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice should be given by officers based upon the development plan and material planning considerations.
- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.

- Confirmation that a written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines would apply. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Authorities should think about when, however, discussions should be registered and notes written.

Authorities have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken)
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

The Statement of Community Involvement will set out the council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

Officer reports to committee

As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.

- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

New documents should not be circulated to the committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- discussing the areas of difference and the reasons for that with planning officers beforehand (as part of a standard 'call-over' meeting where all items on the agenda are discussed)
- recording the detailed reasons as part of the mover's motion
- adjourning for a few minutes for those reasons to be discussed and then agreed by the committee
- where there is concern about the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.

The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

Committee site visits

National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply.
- keep a record of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing or
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters.

This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

Annual review of decisions

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.

Complaints and record keeping

All councils should have a complaints procedure which may apply to all council activities. A council should also consider how planning-related complaints will be handled, in relation to the code of conduct adopted by the authority.

So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

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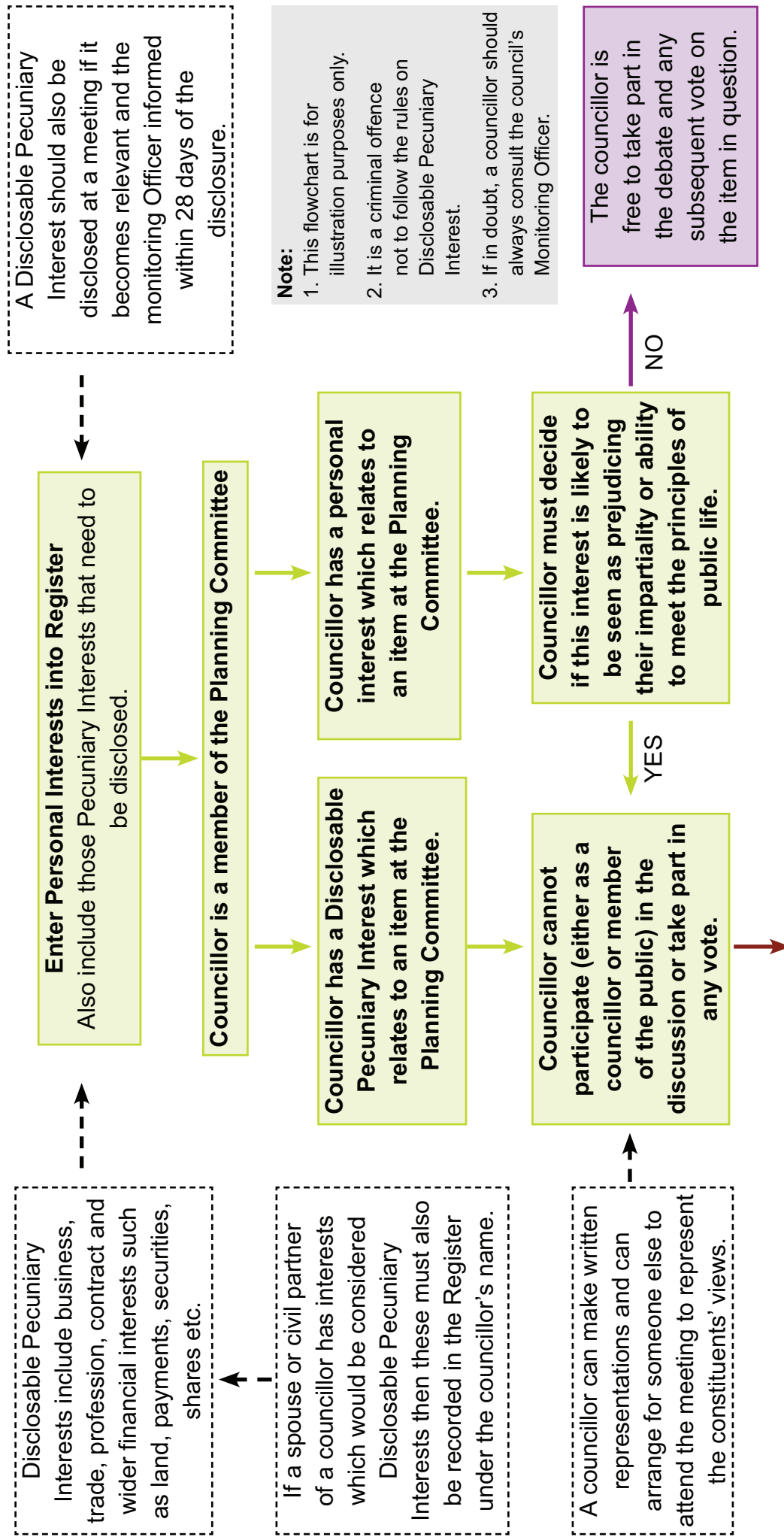
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Department for Communities and Local Government, March 2013
<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>

The Planning System – matching expectations to capacity
Audit Commission, February 2006
http://archive.audit-commission.gov.uk/auditcommission/sitecollectiondocuments/AuditCommissionReports/NationalStudies/Planning_FINAL.pdf

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Flowchart of councillors' interests



A Disclosable Pecuniary Interest should also be disclosed at a meeting if it becomes relevant and the monitoring Officer informed within 28 days of the disclosure.

Note:

1. This flowchart is for illustration purposes only.
2. It is a criminal offence not to follow the rules on Disclosable Pecuniary Interest.
3. If in doubt, a councillor should always consult the council's Monitoring Officer.

The councillor is free to take part in the debate and any subsequent vote on the item in question.

Councillor must leave the room if Council's Standing Orders require it or if continuing presence is incompatible with the Council's code of conduct or it would contravene the principles of public life. Special dispensation can be sought in exceptional circumstances.



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Code of Practice for Members and Officers Dealing with Planning Matters

This Code of Practice supplements the Council's Code of Conduct for Members and where appropriate members should refer to the Code of Conduct which is set out in the Council's Constitution. The Council's Monitoring Officer's advice may be sought on the interpretation of the Code of Conduct or this Code.

1. INTRODUCTION

1.1 Planning affects land and property interests, including the financial value of land and the quality of their settings. It is not an exact science. It is often highly contentious because decisions affect the daily lives of everyone and the private interests of members of the public, landowners and developers.

Oposing views are often strongly held by those involved. A key role of the planning process is balancing the needs and interests of individuals and the community.

1.2 The planning system can only function effectively if there is trust among those involved. There must be trust between members and officers and between the public and the council. The Third report of the Committee on Standards in Public Life (the Nolan Committee) (1997) recommended that each local authority's practices and procedures were set out in a local code of planning conduct to avoid allegations of malpractice in the operation of the planning system.

1.3 The general principles that underlie the Council's Code of Conduct for Members and apply to this Code of Practice are:

- Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
- Members should not place themselves in situations where their honesty or integrity may be questioned.
- Members should make decisions on merit.
- Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
- Members may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
- Members should respect the impartiality and integrity of officers.

1.4 The Council is committed to open, fair and transparent decision-making. Planning decisions should be made impartially, with sound judgment and for justifiable reasons.

1.5 This Code of Practice sets out practices and procedures that members and officers of the County Council shall follow when involved in planning matters.

Planning matters include the consideration of planning applications, the preparation of development plans and other planning policy and the enforcement of planning control.

1.6 This code is largely based upon the Local Government Association's Guidance entitled Probity in Planning for councillors and officers published in April 2013, which takes account of the ethical framework for local government. It takes account of the Royal Town Planning Institute's Code of Professional Conduct and advice issued by the Audit Commission, the Commissioners for Local Administration in England and the National Planning Forum. It complements the Council's Code of Conduct for Members. This code is consistent with meeting the requirements of Article 6 of the European Convention on Human Rights which confers a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations. In respect to the advice contained at paragraph 7 regarding Member engagement in pre-application advice, account has been had of advice issued by the Planning Advisory Service, the Standards Board for England and the LGA advice leaflet 'Positive Engagement' issued in 2009.

1.7 Failure to follow this code without good reason, could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected members and officers. Breaches of this Code may also amount to breaches of the Council's Code of Conduct for Members. If in doubt about what course of action to take, a member or officer should seek the advice of the Council's Monitoring Officer.

2. THE ROLE AND CONDUCT OF MEMBERS AND OFFICERS

2.1 Members and officers have different, but complementary roles. Both serve the public but members are responsible to the electorate, while officers are responsible to the Council as a whole.

2.2 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. This is particularly pertinent to members involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest.

2.3 Members' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Members must, therefore, consider all of the material issues in the light of Development Plan policies, Government advice and their own individual judgment and make a decision in the interests of the County as a whole.

2.4 Whilst members should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

2.5 Members should treat with extreme caution any offer of a gift or hospitality which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers

of hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, officers shall ensure it is of a minimal level and declare it in the hospitality book as soon as possible.

2.6 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of that code may be subject to disciplinary action by the Institute.

2.7 That the Council may not always follow the advice of their professional planning officers is perfectly proper. The professional officer too, may have a change of opinion, but this must be on the basis of professional judgement, and not because an authority, its members or other officers, have prevailed upon the officer to put forward his or her professional view as something other than it really is.

2.8 The County Council endorses the statement in the RTPI code that, 'RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions', and extends it to apply to all officers in the authority advising on planning matters.

2.9 The County Council shall have a designated head of the planning service, who is qualified for election to membership of the RTPI and who has direct access to elected members as their professional adviser on planning matters. A superior officer shall not have the power to overrule the professional advice of the head of the planning service.

2.10 Officers shall follow the guidance on their standards of conduct as set out in the County Council's Staff Guidance, the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000 (as amended).

3. DECLARATION OF NON REGISTERABLE PERSONAL INTERESTS

3.1 The Council's Code of Conduct advises members on the disclosure of a nonregisterable personal interest and whether it is a prejudicial interest which would lead to non participation in Council business. Personal interests include those of members of your family or any persons with whom you have a close association or their employer, any firm in which they are a partner or company of which they are a director or shareholder. Members of your family are defined in the Code. You have a close association with someone if your relationship is such that a reasonable member of the public might think you would be prepared to favour that person when deciding on a matter which affects them. Friends are not defined but it is suggested that it is someone well known to the member and regarded with liking, affection and loyalty, that is a closer relationship than mere acquaintance. If in doubt the Monitoring Officer's advice should be sought.

3.2 If the non-registerable interest is personal and prejudicial the member shall declare it at the earliest opportunity, must not participate in any discussion or vote taken on the matter at the meeting, must leave the room where the matter is being considered and must not try to influence those making the decision or take any part in the consideration or determination of the matter.

3.3 Where a member has a non-registerable personal interest that is not prejudicial under the Council's Code of Conduct, the member, when attending a meeting of the Council at which the matter is considered, shall declare it at the commencement of the meeting and may participate in the discussion and vote on the matter.

3.4 New rules in relation to bias and predetermination have been introduced by section 25 of the Localism Act 2011. The new rule applies if there is an issue about the validity of a decision and it is relevant to that issue whether a member had or appeared to have a closed mind when making the decision. Under the new rules a member is not to be taken to have had, or appeared to have had a closed mind when making the decision just because she or he had previously done anything that directly or indirectly indicated the view the member took, or would or might take, in relation to a matter relevant to the decision,

3.5 The principle that members must not participate in decisions where they are perceived to be biased remains. An example would be a member who was a governor of a school which was putting forward a planning application

3.6 Serving members should not act as agents for persons pursuing planning matters within their authority . If they submit their own proposal to the authority on which they serve, they should play no part in its consideration. When submitting proposals on behalf of themselves , the member shall inform the Monitoring Officer of the submission.

3.7 Officers must always act impartially. An officer who believes he or she may be seen to have a personal and prejudicial interest in a planning matter, shall declare it at the earliest opportunity, so advising the Head of Planning and the Monitoring Officer and have no further involvement in the processing or consideration of that matter.

3.8 Planning officers shall never act as agents for persons pursuing a planning matter within the county or one outside significantly affecting the county.

4. 'DUAL-HATTED MEMBERS'

4.1 The Council's Code of Conduct does not automatically prevent members from considering the same issue at more than one tier of local government, including speaking and voting at both tiers.

4.2 For example, if a member is also a member of a parish council, and the parish council is consulted on a planning application to be determined by the Planning Committee, the member may participate in the discussion and vote at the parish council meeting; but it would be prudent to inform the parish council that the member will reconsider the matter taking into account all the information that is put before the Planning Committee. At the subsequent meeting of the Planning Committee the member should declare a personal (but not prejudicial) interest as a member of the parish council which has already expressed a view on the matter, but make it clear that this view does not bind the member who will consider the matter afresh. The member will be free to participate in the debate and vote on the matter.

4.3 However, if the Planning Committee considers a planning application by an authority or body on which a member serves, then the member should declare a non-registerable personal and prejudicial interest and withdraw from the meeting.

5. DEVELOPMENT PROPOSED BY THE COUNCIL OR A COUNCIL OWNED COMPANY

5.1 Planning legislation allows the Council to submit and determine proposals for development that it proposes to carry out itself. Council owned companies also submit proposals that are decided by the Council.

5.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by private developers.

5.3 Members of the planning committee who sit on the board of a Council owned company which has submitted a planning proposal shall declare a non registerable personal and prejudicial interest and take no part in the discussion and determination of that proposal.

5.4 Officers who are involved in the preparation of development proposals shall not advise on, or take any part in the consideration of, planning applications in respect of such proposals.

6. LOBBYING OF AND BY MEMBERS

6.1 Lobbying is a normal and proper part of the political process. The applicant, supporters or those who may be affected by a proposal will often seek to influence the decision by an approach to their local member or members of a planning committee. However, reacting to lobbying can lead to the impartiality of a member being called into question and require that member to declare an interest.

6.2 The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessment of the case by the planning officer all need to be considered before a member is in a position to make a balanced judgement on the merits of the case. Members should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.

6.3 The time for individual members of the planning committee to make a decision on a proposal is at the committee meeting when all available information is to hand and has been duly considered.

6.4 A planning committee member shall be free to listen to a point of view about a planning proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, planning committee members should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting.

To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if members do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Members should make clear that they reserve their final decision on a proposal until the committee meeting.

6.5 Members of the planning committee shall not, in general, organise support or opposition for a proposal, or lobby other members (other than when addressing the planning committee). Members of the Council shall not put improper pressure on officers for a particular recommendation.

6.6 The local member who is not a member of the Planning Committee will be allowed to attend and speak at the decision-making meeting but not vote. The member of an adjacent division substantially affected by the proposal shall, at the discretion of the chair of the planning committee, be allowed to attend and speak but not vote. A local member who has a personal or prejudicial interest in an application, within the meaning of the Code of Conduct should seek prior advice from the Monitoring Officer about his or her position.

6.7 If a member of the Planning Committee identifies himself or herself with a group or individual campaigning for or against an application, he or she shall declare a non-registerable personal and prejudicial interest and not vote or decide on the matter. However, that member shall be given the opportunity to address the Committee.

6.8 Members of a planning committee must be free to vote as they consider appropriate on planning matters. Political group meetings prior to the committee meeting shall not be used to decide how members should vote at the planning committee.

7. PRE-AND POST-APPLICATION DISCUSSIONS AND NEGOTIATIONS

7.1 Discussions between an applicant and a planning authority, prior to the submission of an application can be of considerable benefit to both parties and is actively encouraged in accordance with the Council's protocol on pre-application advice. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the planning process. However, they should take place within clear guidelines, as follows.

7.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are those of the officer only, and are provisional.

7.3 Advice should be consistent and based upon the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies by individual planning officers.

7.4 A written note should be made of all potentially contentious meetings. Two or more officers should attend potentially contentious meetings. A note should also be taken of potentially contentious telephone discussions.

7.5 Members need to preserve their role as impartial decision makers and should not ordinarily take part in pre-or post-submission discussions and negotiations with applicants regarding development proposals. The exception to this is for those major schemes which are considered to be of importance to the County or schemes that are likely to be highly contentious and are therefore subject to the Council's Pre-Application Member Engagement protocol which provides for structured arrangements with officers and a prospective developer. Members must avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants.

7.6 Members may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by members should be provided to the officers dealing with the application.

8. OFFICER REPORTS TO COMMITTEE

8.1 The Head of Planning will submit written reports to the Planning Committee on planning applications to be determined by the County Council. The reports will give the background to the application including any relevant planning history of the site, a description of the proposals and their likely effects, and the relevant Development Plan and Government policy considerations, together with any other material considerations. Where a planning application requires an environmental impact assessment the Head of Planning shall include in his/her report a summary of the environmental statement, comments by bodies consulted and representations from members of the public together with his/her own comments. The reports will include a summary of representations made about the application including those made by the applicant. The Head of Planning in his/her report will give a reasoned assessment of the proposals and a justified recommendation.

8.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.

8.3 The Head of Planning will have available for inspection by members the full planning application, environmental statement (where required) and representations from bodies consulted and members of the public.

9. THE DECISION MAKING PROCESS

9.1 Members shall recognise that the law requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.

9.2 Where an environmental impact assessment is required, the Planning Committee shall take the information provided in the report into consideration when determining the application.

9.3 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

9.4 Where the Planning Committee decide to adopt the recommendation of the Head of Planning, the reasons contained in his/her report will be minuted, together with any additional reasons determined by the Committee.

9.5 Where the Planning Committee is minded to approve or to refuse a planning application, contrary to the recommendation of the Head of Planning, agreement shall be reached at the meeting on the reasons for that decision. They shall be fully minuted by the Head of Legal and Democratic Services.

10. SITE VISITS BY THE COMMITTEE

10.1 A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing or
- the proposal is particularly contentious.

10.2 Site visits will be organised in accordance with the following procedures:

(i) The Head of Legal and Democratic Services will invite the local County Councillor to site visits. Where a proposal would have significant direct impact upon an adjacent electoral division, at the discretion of the Chairman of the Planning Committee, the local County Councillor for the adjacent division will also be invited.

(ii) The role of the applicant during a site visit shall only be to secure access to the site in accordance with health and safety provisions. The applicant shall not participate in any discussions on site but may be asked to provide factual information.

(iii) Objectors will not normally be invited to attend a site visit or participate in any discussions on site.

(iv) On assembling at the site, at the time specified, the Chairman will explain the purpose and procedures of the site visit so that all are aware that it is a fact finding exercise only and that no decision will be taken until the committee meeting. The Head of Planning, or his/her representative, will explain the application as it relates to the site and relevant viewpoints. Following any questions to the Head of Planning, the Chairman will bring the site visit to a close.

(v) When a site visit is held prior to the meeting of the Planning Committee it is desirable that all members attending the Planning Committee should also attend the site visit. Members voting on a planning application without having attended the visit to the particular site may give the impression that they have not taken the opportunity to be fully informed about the application.

11. REPRESENTATIONS ON PLANNING APPLICATIONS

11.1 Wherever possible, objections or representations to planning applications should be made in writing. Written representations received will be made available for public inspection and objections summarised and reported to the Planning Committee. Members of the Council will be given the opportunity to inspect all letters received before the decision on the application is made.

11.2 There will be occasions when applicants or objectors, or both, may wish to make representations in person to the Planning Committee. In such circumstances the following procedure will apply:

(i) The applicant will be informed that the application and all supporting documents will be taken into account. The objectors will be informed that their written representations will be taken into account. Both the applicant and the objectors will also be informed that they have the right to attend the Committee and make representations in person. They will be asked to indicate whether they wish to do this and, if so, they will be invited to the meeting at which the decision is to be made.

(ii) Each group of speakers (objectors and supporters) will be allowed a maximum of five minutes (except at the discretion of the Chairman) to address the committee. In the event that more than one person wishes to speak for or against a proposal the time will be divided. Groups of speakers will be encouraged to appoint a spokesperson.

(iii) At the meeting the Head of Planning will present his / her report first.

(iv) The objectors will make their representations, subject to a time limit of 5 minutes (except at the discretion of the Chairman), and may be asked questions by the Committee.

(v) The applicant will then make his or her representations, subject to a time limit of 5 minutes (except at the discretion of the Chairman), and may be asked questions by the Committee.

(vi) Officers may comment on the representations and the merits of the application.

(vii) The Committee will proceed to debate the application and make a decision. The minute will include the reasons for the decision.

(viii) Where a representative of a Parish/Town Council wishes to speak they will address the meeting before the objectors.

(ix) New documents should not be circulated to the committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising.

12. REVIEW OF DECISIONS

12.1 The Audit Commission's Report, 'Building in Quality', recommended that elected members should visit a sample of implemented planning permissions to assess the quality of decisions. This can improve the quality and consistency of decision-making and help with reviews of planning policy.

12.2 Visits to application sites previously considered by the County Council shall be organised in tandem with visits to current application sites, as appropriate. Briefing notes shall be prepared in each case.

12.3 Attendance at the review site visits shall be restricted to members of the committee and the local County Council members.

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