Local Government Association

probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters

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contents

foreword

1.1 Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.

The planning system works best when the roles and responsibilities of the many players essential to its effective operation are clearly understood. It is vital that elected councillors and planning officers understand their roles and the context and constraints in which they operate.

1.2 Planning decisions involve balancing:

- the needs and interests of individual constituents and the community, with
- the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

The challenge of achieving the balance between these dual roles led the LGA to issue its original ***Probity in planning*** guidance note in 1997. However, since then a comprehensive ethical framework for local government was introduced following the Local Government Act 2000. A revised national code of conduct for councillors was introduced in 2007. Each authority is required to adopt a local code of conduct that sets out rules governing the behaviour of its members.

This 2009 update provides refreshed advice on achieving this balance in the light of such changes. It also better reflects local authorities' roles as place shapers and the enhanced role for councillors as champions of their local communities. It recognises councillors' ability to participate in discussions prior to the receipt of a planning application on behalf of their communities, and engaging in spatial planning policy formulation.

It provides advice on this following the Killian Pretty review's recommendations. It also advises on how to avoid predetermination or bias in decision making. Whilst the advice is designed primarily for officers and councillors involved in plan-making and development management, it will also assist scrutiny and standards committees dealing with planning matters.

2 introduction

2.1 A lot has changed in expectations of the planning system since the previous LGA guidance was published.

2.2 Following the planning green and white papers, and subsequent legislation, planning is moving to the heart of local authorities place-shaping and community planning roles. Positive attitudes to harnessing the benefits of sustainable development are changing stereotyped images of planning as a control mechanism. More flexible and responsive development plans are being prepared to harness development to build communities and shape places.

2.3 Councillors are encouraged to act as champions of their local communities and to co-ordinate public service delivery through Local and Multi Area Agreements, Strategic Partnerships, and Sustainable Community Strategies. Creative place-shaping requires early and wide engagement and councillor and officer involvement. The 2008 LGA publication ***Planning at the heart of local government*** explains these changes in more detail.

2.4 This guidance is intended to facilitate the development of councillors' community engagement roles. The Nolan report resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. However in the place-shaping context, early councillor engagement is now positively encouraged to ensure sustainable development proposals can be harnessed to produce the settlements that communities need.

2.5 This guidance is intended to amplify the following for councillors grasping these new opportunities:

- Standards Board for England 2007 ***members guide on the code of conduct and occasional paper on predisposition, predetermination and bias;***
- Association of Council Secretaries and Solicitors ***Model member's planning code of good practice 2007***; and the
- Planning Advisory Service ***Effective engagement*** advice.

2.6 Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the development plan and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.

2.7 One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

2.8 Bearing in mind all these factors, it is not surprising that, from time to time, things can go wrong unless councils are on their guard. This is why this guidance is essential.

2.9 The intention of the guidance is not to suggest that there is one best way of doing things. Local circumstances may well provide good reasons for local variations of policy and practice. However, each council should review the way in which it conducts its planning business, holding in mind the recommendations of this guidance.

2.10 This guidance refers to the actions of a planning committee of an authority, as the main decision-making forum on planning matters. However, it is recognised that authorities have developed a range of alternative forms of decision-making: area committees; planning boards, and of course, the full council itself - as the final arbiter in planning matters. It is important to stress, therefore, that the advice in this guidance note applies equally to these alternative forms of decision-making arrangements. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local development documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in any planning enforcement.

2.11 This revised guidance note is useful to both councillors and officers who become involved in operating the planning system - it is not therefore restricted to professional town planners and planning committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

3 the general role and conduct of councillors and officers

3.1 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. It follows that instructions may only be given to officers through a decision of the council or its executive or a committee. Any other system which develops is open to question. A successful relationship between councillors and officers can only be based upon mutual trust and understanding of each others positions. This relationship and the trust which underpins it must never be abused or compromised.

3.2 Both councillors and officers are guided by codes of conduct. The code of conduct for members (the code), supplemented by guidance from the Standards Board, provides standards and guidance for councillors. Staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. However, not all planning officers are members of the RTPI and it is therefore recommended that the Code of Professional Conduct (or those parts of it which are relevant) is incorporated into conditions of employment. In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

3.3 The code sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, as well as appropriate relationships with other members, staff and the public. This impacts on the way in which councillors participate in the planning process. Of particular relevance to councillors making decisions on planning applications and planning policies is paragraph 6(a) which states that a member:

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

3.4 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst councillors should take account of these views,

they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.

3.5 Councillors should also be very cautious about accepting gifts and hospitality. The code requires any members receiving, in their capacity as members, any gift or hospitality over the value of £25, to provide written notification of the details to the monitoring officer of the council within 28 days of its receipt. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.

3.6 Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible. Councils should provide a hospitality book to record such offers whether or not accepted. This book should be reviewed regularly by the council's monitoring officer. Failure by an officer to make an entry is likely to lead to disciplinary measures.

3.7 Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, 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.

3.8 Staff must act impartially as a requirement of the draft statutory employees' code. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on members in the code. Members are placed under a requirement by paragraphs 2(b) and (c) of the code to: treat others with respect; and not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3.9 Finally, planning legislation and guidance can be complex. The LGA endorses the good practice of many councils which ensures that their members receive training on the planning process when first serving on the planning committee. It also recommends that members be updated regularly on changes to legislation or procedures. Such training is essential for those members involved in making decisions on planning applications and on local development documents. Authorities should provide training on the planning processes for all members.

4 registration and declaration of interests: predetermination, predisposition or bias

4.1 The Local Government Act 2000 and the national code place requirements on members on the registration and declaration of their interests, as well as the consequences for the member's participation in consideration of an issue, in the light of those interests. For full guidance on personal and prejudicial interests reference should be made to the Standard's Board ***Code of Conduct guidance*** 2007. In addition, advice may be sought from the council's monitoring officer. The requirements must be followed scrupulously and councillors should review their situation regularly. However, ultimate responsibility for fulfilling the requirements rests individually with each councillor.

4.2 The provisions of the code are an attempt to separate out interests arising from the personal and private interests of the councillor and those arising from the councillor's wider public life. The emphasis is on a consideration of the status of the interest in each case by the councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts.

4.3 A register of members' interests will be maintained by the council's monitoring officer, which will be available for public inspection. A member 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 member becoming aware of such changes.

4.4 An interest can either be personal or personal and prejudicial. The 2007 national code defines personal and prejudicial interests in any matter under discussion, and should be referred to for the appropriate detail. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints. Sections 6.4 and 6.5 of this guidance further illustrate the concepts of bias and predetermination.

4.5 A prejudicial interest would require withdrawal of the councillor from the committee. However, an exception has been included in the 2007 code. Where a councillor has a prejudicial interest in any business of the authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Paragraph 5.3 of this guidance advises on this when a councillor is submitting a planning application to their authority.

4.6 If a councillor with a prejudicial interest speaks at a committee, they should withdraw after they have spoken. This is to ensure that members of the committee do not, by their presence, influence or seek to influence the remainder of the decision-making body.

4.7 The exceptions made to the definition of personal interests in the code, relating to membership of outside bodies, are attempts to clarify the nature of such interests and to encourage participation in such cases. It appears that too often in the past, members had been prevented from participation in discussions in such circumstances, on the basis that mere membership of another body constituted an interest that required such a prohibition, even in cases where the member was only on that body as a representative of the authority.

In addition, this clause was intended to allow councillors to exercise their representative function and make representations on behalf of their constituents, in cases where they have a personal and prejudicial interest.

4.8 A personal interest will not require withdrawal. Where a member considers they have a personal interest in a matter, they must always declare it, but it does not follow that the personal interest debars the member from participation in the discussion.

4.9 In addition to any declaring personal or prejudicial interests, members of a planning committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. The Standards Board has provided guidance on predetermination, predisposition and bias. Avoidance of bias or predetermination is a principle of natural justice which the decision-maker is expected to embrace by the courts. But councillors will often form an initial impression or view.

A distinction is drawn by the courts between a planning councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination), and a predisposition to an initial view, but where the councillor is clear they are willing to listen to all the material considerations presented at the committee before deciding on how to exercise their vote on behalf of the community. In the latter case there is no predetermination. This distinction is helpfully explained by the Standards Board for England in an occasional paper.

4.10 If a planning committee councillor has been lobbied by friends or others and wishes to pre-determine their position to promote or oppose a planning application, they will need to consider whether this has become a personal interest or not. Whether or not it is a personal interest, they need to consider if their view is likely to be regarded as pre-determined and against the fair determination of the planning application. If they have pre-determined their position, they should avoid being part of the decision-making body for that application.

4.11 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. The councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their normal planning committee membership. However they would have to declare their position and not take part in the vote to avoid accusations of bias.

4.12 Cabinets and executives have created an interesting situation for cabinet members, portfolio holders and leaders who are also members of the planning application or local development document planning decision body. Authorities will typically have a member responsible for development. If that member is on the authority's planning committee or other decision-making body for planning matters, there may be occasions when that member will wish to press for a particular development which the member regards as beneficial to the development of the area. Should that executive member be able to vote on any planning application relating to that development?

4.13 The appropriate action is not clear cut, and will depend on the circumstances of a particular case. However, the general advice is that a member in such circumstances may well be so committed to a particular development as the result of their cabinet/executive responsibility that they may not be able to demonstrate that they are able to take account of all material considerations before a final decision on a planning application is reached. The member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the member almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

4.14 Given the significance of well-informed and appropriate judgments by members on the declaration of interests, predetermination predisposition and bias, it is strongly recommended that councils should hold annual seminars on the issue, and on the planning process generally. Many do this.

The Standards Board nationally, and the authority's standards committee locally, have the statutory responsibility of promoting and maintaining high standards of conduct by members and assisting them to observe the authority's statutory code of conduct. In providing such guidance and training to members at local level, the standards committee of the authority should be encouraged to include provision for the implications of the code and this guidance in planning matters to be considered.

5 development proposals submitted by councillors and officers; and council development

5.1 Proposals to their own authority by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. So can proposals for a council's own development. Proposals can take the form of either planning applications or development plan proposals.

5.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such 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:

- serving councillors who act as agents for people pursuing planning matters within their authority should not play a part in the decision-making process for those proposals. Similarly, if they submit their own proposal to their authority they should play no part in its decision making;
- a system should be devised to identify such proposals;
- the council's monitoring officer should be informed of such proposals;
- proposals should be reported to the planning committee as main items and not dealt with by officers under delegated powers.

5.3 The consideration of a proposal from a councillor in such circumstances would be considered as a prejudicial interest under the code and as such, the councillor would be required to withdraw from any consideration of the matter. The code also provides that the councillor should 'not seek improperly to influence a decision about the matter'. It is important to emphasise here that 'improperly' does not imply that a councillor should have any fewer rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a committee.

However, whilst a member with a prejudicial interest may now address the committee under the code if the public enjoy the same rights, the member should consider whether it would be wise to do so in all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the councillor with the remainder of the planning committee.

5.4 Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers . A member whose cabinet/executive responsibility effectively makes them an advocate for the development in question almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

6

lobbying of and by councillors

6.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the planning committee. As the Nolan Committee's third 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". Any guidance failing to take account of the realities of the political/representative process will not carry credibility with experienced elected members.

6.2 However, lobbying can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved. When being lobbied, councillors (members of the planning committee in particular) should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the officer's report to the committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.

6.3 Concerns on poor practices within local authorities have often been based on the issue of lobbying.

6.4 Councillors, and members of the planning committee in particular, need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, members taking the decision will take account of all the evidence presented before arriving at a decision, and will avoid committing themselves one way or another before hearing all the arguments. To do otherwise makes them vulnerable to an accusation of partiality. Bias or the appearance of bias has to be avoided by the decision-maker. Whilst the determination of a planning application is not strictly a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is,

nevertheless, a formal administrative process involving 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. There is an added possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at; or complain to the Local Government Ombudsman on grounds of mal-administration; or that a member has breached the code.

6.5 In reality of course, members will often form an initial view (a predisposition) about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the planning committee's proceedings as set out in the paragraph above, is that members of the committee (at least those who are not councillors of the affected ward - see overleaf) should not decide or declare which way they may be inclined to vote in advance of the planning meeting, or before hearing evidence and arguments on both sides.

6.6 Political reality suggests that it is often important to distinguish between the role of the planning committee member who is, and who is not, a ward member for the area affected by a particular planning application.

A planning committee member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the committee meeting before declaring one way or another.

6.7 A planning committee member who represents a ward affected by an application may be in a difficult position if it is a controversial matter on which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome - or even campaigning actively for it - they will have predetermined their position when the committee comes to take a decision on the application. The risk of perceived bias means that the proper course of action for such a member would be not to vote.

6.8 As explained previously, even where a councillor has a prejudicial interest in any business of the authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose.

6.9 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. A pre-determined councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their planning committee membership. If that councillor 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. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence.

6.10 Councils should consider the provision of arrangements for the planning committee to hear representations from a ward member in circumstances where that member takes the view that it would be inappropriate to vote, if these are not already dealt with in the council's procedures. (See also section 9 on public speaking at planning committees).

6.11 It should be evident from the previous paragraphs that 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 member.

6.12 Any local code or guidance of planning good practice should also address the following more specific issues about lobbying:

- given that the point at which a decision on a planning application is made cannot occur before the planning committee meeting, when all available information is to hand and has been duly considered, no political group meeting should be used to decide how councillors should vote. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration;
- with the exception in some circumstances of ward councillors, whose position has already been covered in the preceding paragraphs, planning committee councillors should in general avoid organising support for or against a planning application, and avoid lobbying other councillors. Such actions can easily be misunderstood by parties to the application and to the general public;
- councillors should not put improper pressure on officers for a particular recommendation, and, as required by the code, should not do anything which compromises, or is likely to compromise, the officers' impartiality. Officers acting under the council's delegation scheme to determine an application or making recommendations for decision by committee, are required to be impartial. It is therefore important, as reflected in the code, for councillors to refrain from seeking to influence the outcome of the officer's decision or recommendation;
- call-in procedures, whereby members can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committees, should include provisions requiring the reasons for call in to be expressed in writing so that there is a record of decision, and should refer solely to matters of material planning concern.

7

pre-application discussions

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

7.2 With the recognition of the need to allow and encourage councillors to be champions of their local communities in the local government white paper, there has followed a realisation that councillor engagement in pre-application discussions on major development is necessary to allow councillors to fulfil this role. Many councils had been so concerned about probity issues following Nolan and the introduction of the ethical code, that they had not involved councillors in pre-application discussions for fear of councillors being accused of predetermination when the subsequent application came before them for determination.

7.3 In 2006, the Audit Commission followed emerging advice from the Local Government Association, National Planning Forum, and Planning Advisory Service that councillor involvement in pre-application discussions was beneficial provided it was done within carefully established limits to protect the council and its councillors. The Audit Commission recommended that councils should develop effective approaches to pre-application discussions which involve councillors, to ensure the issues relating to proposed planning applications are identified and addressed early in the process. This was partly to help councillors lead on community issues and partly to ensure that issues were not identified for the first time when the application was presented to the committee for decision, causing delay and frustration.

7.4 The updated 2008 leaflet ***Positive engagement – a guide for planning councillors*** endorsed by the government and LGA asks councillors to be prepared to engage with officers in appropriate pre-application discussions.

7.5 In order to avoid perceptions that councillors might have fettered their discretion in any pre application discussions, **such discussions should take place within clear guidelines. These guidelines need to be developed by an authority and published to assist councillors and officers**. Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken. In addition to any guidelines to deal with specific local circumstances, a protocol should include:

- 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;
- consistent advice should be given by officers based upon the development plan and material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. It is officers' role to ensure consistency of advice and officers should therefore be present with councillors in pre application meetings. All officers taking part in such discussions should make clear whether or not they are the decision-maker. 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. They should ask their officers to deal with any necessary negotiations to ensure that the authority's position is co-ordinated;
- a written note should be made of all meetings. An officer would best make the arrangements for such meetings, attend and write a follow-up letter. A note should also be taken of similar telephone discussions. The note should be placed on the file as a public record to show a transparent approach. Sometimes confidentiality is needed and should be respected. However the need for this can easily be exaggerated and confidentiality of advice by representatives of a public body on a planning matter will rarely be justified even if the applicant's interest is sensitive. If there is a legitimate reason for confidentiality regarding the proposal, a note of the non-confidential issues raised or advice given can still normally be recorded on the file to reassure others not party to the discussion;
- care must be taken to ensure that advice is not partial (nor seen to be), otherwise the subsequent report or recommendation to committee could appear to be advocacy; and
- the decision as to whether to establish a register for everyday contacts between councillors and interested parties will depend on local circumstances. Many councillors will be talking regularly to constituents to gauge their views on matters of local concern, and such a register may be considered, as the Nolan Committee argued, impractical and unnecessary. Councillors will, however, need to register any gifts and hospitality received as a requirement of the code.

7.6 Consideration needs to be given to when to involve other consultees and the community in pre-application discussions. Some authorities have been very successful in engaging their councillors and communities by having public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consulttees. The advantages of the authority setting up such forums are the transparency of process, and the ability of ward councillors and other councillors to seek information and identify important issues for the proposal to address, without the risk of planning councillors having engaged with developers in such a way as to suggest they have pre-determined themselves. Members should also be aware of the code of conduct which means that they should not use their position to improperly influence decisions. This provision does not only apply to councillors when they are in a committee meeting.

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

- committee information reports by officers of discussions from which councillors can identify items of interest and seek further information and raise issues for consideration;
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be;
- ward councillor briefing by officers of the content of initial pre application meetings held.

7.8 The 2007 CLG report on ***Member Involvement in Planning Decisions***, the 2007 London Councils report on ***Connecting Councillors with Strategic Planning Applications***, and the 2007 POS Enterprises Development Management practice guidance note on ***Councillor involvement in pre-application discussions*** provide examples and advice for those interested in developing appropriate protocols for their authority. Full references are given at the end of this document.

7.9 Statements of Community Involvement required as part of the LDF need to be reviewed to see whether mechanisms for such dialogue are already in place, or if the statement needs to be updated to reflect the council's approach.

8 officer reports to committee

8.1 The courts and Ombudsman advice have determined officer reports on planning applications must have regard to the following points:

- reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted;
- relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations;
- reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur;
- reports should contain technical appraisals which clearly justify a 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.

It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, or give rise to judicial review 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.

9

public speaking at planning committees

9.1 The principle of whether or not public speaking should be allowed at a planning committee is very much a matter for the local authority concerned. A majority of authorities now provide such an opportunity. The benefits seen by those authorities are that public confidence is generally enhanced and that direct lobbying may as a result be reduced. The disadvantage is that the approach may lengthen meetings and make them marginally more difficult to manage. However, where public speaking is allowed, it is important that clear protocols are established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors arrangements. In addition, in the interests of equity, the time allowed for presentations for and against the development should be identical, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

9.2 Documents not previously submitted should not normally be circulated to the committee as all parties may not have time to react to the submissions, and councillors may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This should also be told to those who intend to speak.

The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. For similar reasons, messages passed to members sitting in planning committees should be avoided. Care needs to be taken to avoid the perception of external influence or bias.

10 decision contrary to officer recommendation and/or the development plan

10.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations indicate otherwise (s38A Planning & Compensation Act 2004).

10.2 This gives rise to two main issues. Firstly, all applications which are not in accordance with the development plan must be identified and advertised as such. Secondly, 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. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

10.3 The Association of Council Secretaries and Solicitors' ***Model Planning Code*** advises planning committees to take the following steps prior to making a decision contrary to officers' recommendations:

- encouraging the formation of tentative reasons by discussing a predisposition with planning officers beforehand;
- writing down the reasons as part of the mover's motion;
- adjourning for a few minutes for those reasons to be discussed;
- if a very strong objection from officers on validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

10.4 If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Thus, members should be prepared to explain in full their reasons for not agreeing with the officer's recommendation. In so doing, members should observe the 'Wednesbury principle' (the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223) which, put simply, requires all relevant information (ie material considerations) to be taken into account and all irrelevant information (ie non-material matters) to be ignored.

The officer should also be given an opportunity to explain the implications of the contrary decision.

10.5 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 considerations which might cause local controversy, will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker.

11 committee site visit

11.1 Earlier enquiries revealed little consistency amongst councils on the operation of site visits, both in terms of why they are held and how they are conducted. While a variety of approaches can be healthy, the lack of any common approach on when and why to hold a site visit and how to conduct it can leave a council open to the accusation that such visits are arbitrary and unfair or a covert lobbying device. A protocol setting out the arrangements for a council could be used to encourage consistency and transparency of process.

11.2 The code applies whenever the councillor is conducting official business, which will include site visits. Councils should set out the criteria for deciding when a site visit is justified and consider the procedures for such visits. In doing so, the following points may be helpful:

- site visits can cause delay and additional costs and should only be used where the expected benefit is substantial; officers will have visited the site and identified material considerations on behalf of the council;
- they should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit;
- many councils allow site visits to be 'triggered' by a request from the ward councillor. It is acknowledged that this may be a proper part of the representative role of the member, and should normally be considered if allowed for in any local planning guidance, although the 'substantial benefit' test should still apply. It is also good practice to keep a record of the reasons why a site visit is called.

11.3 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 (although if that is the case, additional illustrative material should have been requested in advance); or
- there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.

11.4 Site visits consisting simply of an inspection by a viewing sub-committee, with officer assistance, are in most cases the most fair and equitable approach. An inspection could be unaccompanied (ie without applicant and objectors) or accompanied but run on the strict lines of a planning inspector's site inspection, ie not allowing arguments to be expressed on site.

12

regular review of decisions

12.1 The report of the Audit Commission Building in Quality recommended that councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, strengthening public confidence in the planning system, and can help with reviews of planning policy.

12.2 Such reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; 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 gave rise to the need to reconsider any policies or practices.

12.3 Scrutiny 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 from the visiting of completed developments. It is therefore important for planning committee members to be fully engaged in such reviews.

13 complaints and record keeping

13.1 Whatever procedures a council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.

13.2 A logical consequence of adopting good planning practice guidance is that a council should also have in place a robust complaints system. Such a system may well apply to all council activities, but a council should consider specifically how planning-related complaints will be handled, in relation to the code of good practice.

13.3 So that complaints may be fully investigated and as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could cause a complaint or undermine a council's case. The guiding rule is that 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. Particular care needs to be taken with applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by members. These principles apply equally to enforcement and development plan matters.

14

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