

# Part 5 - 2

## Probity in Planning

### ADVICE FOR COUNCILLORS AND OFFICERS MAKING PLANNING DECISIONS

#### 1. BACKGROUND

1.1 Probity in planning is about ensuring that decisions on plan making and planning applications are undertaken, on behalf of communities, in a fair, impartial and transparent way. The guidance has been written for officers and councillors involved in making planning decisions in their local authority. It is informed by contributions from councillors and officers and includes:

- a brief overview of the planning system and the role of decision makers;
- councillor and officer conduct;
- registration and disclosure of interests;
- predisposition, predetermination or bias;
- lobbying of and by councillors;
- discussions before a decision is taken;
- officer reports;
- public speaking at planning committees;
- decisions which differ from an officer's recommendation;
- committee site visits;
- reviewing past planning decisions and the outcomes; and
- complaints and record keeping.

1.2 Councillors and officers should be familiar with, and adhere to, their own local authority codes of conduct and guidance. This advice is not intended to be prescriptive. Local circumstances may necessitate local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

1.3 The Local Government Association (LGA) endorses the good practice of many councils who ensure their councillors receive training on planning when first appointed to the Planning Committee or Local Plan Steering Group. It is recommended that councillors receive regular ongoing training on probity in decision making and the local Code of Conduct as well as on planning matters. The Planning Advisory Service (PAS) can provide training to councillors.

1.4 The guidance does not constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of probity. Where there are any doubts or queries, advice should always be sought from the Council's Monitoring Officer.

#### 2. THE PLANNING SYSTEM AND ROLE OF DECISION MAKERS

2.1 The National Planning Policy Framework (NPPF) 2019 states that the purpose of the 'planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs'. Planning has a

positive and proactive role to play at the heart of local government and local communities. It can:

- help councils stimulate growth and translate goals into action;
- balance social, economic and environmental needs to achieve sustainable development; and
- deliver important public benefits such as new housing, infrastructure and local employment opportunities.

2.2 Planning law requires that applications for planning permission be determined in accordance with the development plan (the 'local plan' document(s) and if relevant spatial development strategy), unless 'material considerations' indicate otherwise. National Planning Practice Guidance (NPPG) explains that a material planning consideration is one which is relevant to making a planning decision to grant or refuse an application for planning permission. It states that the 'scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations'.

2.3 Local planning authorities are tasked with both preparing the development plan that applications will be accessed against and making planning decisions. In England, the NPPF must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect other relevant international obligations and statutory requirements. Local planning decisions are made in this wider national and international context.

2.4 The determination of a planning application is a formal administrative process involving:

- the application of national and local planning policies;
- reference to legislation, case law and rules of procedure; and
- rights of appeal and an expectation that the Local Planning Authority will act transparently, reasonably and fairly.

2.5 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Planning affects people's lives and 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, or appear to be doing so. Decisions need to be taken in the wider public interest on what can be controversial proposals.

2.6 Because planning decisions can be controversial, it is particularly important that the process is open and transparent. The risk of controversy and conflict is heightened by a system which invites public opinion before taking decisions. The legal and procedural nature of the planning system means there is a risk of complaints to the Ombudsman for maladministration or a breach of the Authority's Code. There may also be a legal challenge, in the form of a judicial

review in which a judge reviews the lawfulness of a decision or action made by a public body.

- 2.7 Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.
- 2.8 Officers prepare the Development Plan (the local plan document or documents) which must conform to the policies set out in the NPPF and be adopted by a meeting of the full Council. Applications for planning permission submitted to the Local Planning Authority are assessed by planning officers who will, based on the Development Plan and any material planning considerations, make recommendations to planning committees who then resolve to grant or refuse the application. Councillors can be involved in decisions on planning enforcement action or compulsory purchase orders.
- 2.9 Most councils also delegate powers to senior officers to determine a large proportion of planning applications, this advice and the Council's Code of Conduct as it relates to planning decisions will apply to these officers too. The applications that go to committee, or are determined by an officer, will be set out in the Local Authority's Scheme of Delegation. Effective delegation can help ensure that decisions on planning applications that raise no significant planning issues are made quickly, and that resources are appropriately concentrated on the applications of greatest significance to the local area. These will typically be larger or more complex applications and potentially controversial – and are defined locally through authority schemes of delegation.
- 2.10 Therefore, whilst councillors are ultimately responsible for decision making in local planning authorities, officers who have delegated authority to make decisions need to be aware of the issues covered in this document – and the advice and principles discussed apply to them too.

### 3. COUNCILLOR AND OFFICER CONDUCT

- 3.1 The seven principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019. These principles are:
  - **Selflessness:** holders of public office should act solely in terms of the public interest.
  - **Integrity:** holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
  - **Objectivity:** holders of public office must act and take decisions impartially,

fairly and on merit, using the best evidence and without discrimination or bias.

- **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** holders of public office should be truthful.
- **Leadership:** holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

3.2 Section 27 of the Localism Act 2011 (as amended) requires local planning authorities to promote and maintain high standards of conduct and adopt a local code of conduct, which should reflect these principles. It must cover:

- the registration of pecuniary interests (explained in Section 4);
- the role of an ‘independent person’ to investigate alleged breaches; and
- sanctions, to be imposed on any councillors who breach the Code.

3.3 Parish and Town Councils (P&TC) are covered by the requirements to have a code of conduct and to register interests. They can choose to ‘opt in’ to the Code of Conduct adopted by their principal authority (the local district or unitary council).

3.4 The Local Government Ethical Standards Report published in 2019 suggests that many codes of conduct fail to adequately address important areas of behaviour, such as social media use and bullying and harassment.

3.5 It includes a number of recommendations for codes of conduct – some of which will require changes to primary or secondary legislation. It also includes a series of best practice recommendations, which they recommend are addressed in codes.

3.6 Many local planning authorities have also adopted their own codes relating specifically to planning, which should be read alongside the substantive Code of Conduct for the Council. In addition to these codes, a Council’s Standing Orders also set down rules which govern the conduct of council business.

3.7 Officers 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. The RTPI provides advice for planning professionals on matters of probity aimed at supporting planners in exercising their independent professional judgement, and promoting public confidence in the planning system.

3.8 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 them.

- 3.9 In addition, officers must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 (as amended) 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.
- 3.10 Care needs to be taken in the use of social media, such as Twitter, Facebook or Instagram, by officers and councillors, where it relates to decision making functions (see Section 5 on predetermination and bias). The Local Government Ethical Standards Report 2019 also addresses issues related to social media use.

## **4. REGISTRATION AND DISCLOSURE OF INTERESTS**

### **Pecuniary Interests**

- 4.1 Decision makers must make known any pecuniary interests – that is any business or wider financial interests – and other personal interests their code requires them to disclose.
- 4.2 Councillors 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 also be registered with the Monitoring Officer within 28 days of the Councillor becoming aware of them.
- 4.3 Each Council's Code of Conduct should establish what interests need to be disclosed. The Council's Monitoring Officer should maintain a register of these disclosable interests, which should be made available to the public. Councillors should also disclose any interest orally at a committee meeting if it relates to an item under discussion.
- 4.4 Chapter 7 of the Localism Act 2011 (as amended) places explicit requirements on councillors to register and disclose their pecuniary interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.<sup>11</sup> It is a criminal offence to:
- Fail to register a disclosable pecuniary interest within 28 days of election or co-option.
  - Give false or misleading information on registration.
  - Participate in discussion or vote in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest.

### **Personal Interests**

- 4.5 The Localism Act also includes the need to register and disclose personal interests with other councillors, officers, and the public.
- 4.6 A councillor with a disclosable pecuniary interest relating to an item under discussion must withdraw from the committee (or other decision forum) and not participate in discussions and debate, nor vote. This applies to all planning decisions and not just on individual planning applications. For example, a development plan document might cover sites or property where a councillor has an interest in the land. Officers involved in making recommendations and

decisions should adopt the same approach, and seek advice from the Authority's Monitoring Officer.

- 4.7 If a councillor has a non-pecuniary personal interest, including being a member of an outside body, they should disclose that interest, but then may still speak and vote on that particular item. However, the Local Government Ethical Standards Report (2019) highlights the potential for conflicts and potential need to withdraw from committee in relation to non-pecuniary interests as well.

### **Dispensation and Handling Relevant Interests**

- 4.8 In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business. A dispensation may be granted for any reason, but the Act specifies a number of scenarios where this might apply.
- 4.9 This includes the number of councillors having an interest being so great that the meeting cannot proceed, with the political balance of the meeting being substantially affected.
- 4.10 It is always best to identify a potential interest in a planning decision early on and raise this with the Monitoring Officer as soon as possible. Advice should always be sought from the Council's Monitoring Officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.
- 4.11 For comprehensive guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013.
- 4.12 The provisions of the Localism Act 2011 (as amended) 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 or not.

## **5. PREDISPOSITION, PREDETERMINATION OR BIAS**

### **Predetermination**

- 5.1 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 having 'predetermined' views when making a decision on a planning application or policy.
- 5.2 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a 'closed mind' approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.

### **Predisposition**

- 5.3 Predisposition is where a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the

meeting. Section 25 of the Localism Act 2011 (as amended) clarifies that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicates what view they might take in relation to any particular matter.

- 5.4 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 says or 'tweets' from their Twitter account: 'Wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before the committee' will be perceived very differently from a councillor who states: 'Many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area'.

## **Impartiality and Avoiding Bias**

- 5.5 Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision making process must be seen to be fair and impartial from the perspective of an external observer.
- 5.6 If a decision maker has predetermined their position, they should withdraw from being a member of the decision making body for that matter. This applies to any member of the Planning Committee who wants to speak for or against a proposal as a campaigner (for example on a proposal within their ward).
- 5.7 Local planning authorities will usually have a Cabinet or Executive Member responsible for development and planning (sometimes known as the portfolio holder). PAS advise that the leader and portfolio holder of a local authority, who play an important role driving planning policies and proposals, should normally exclude themselves from decision making committees. This is to avoid the perception of a conflict of interests and predisposition.
- 5.8 In smaller councils it may be necessary for a portfolio holder to be on a Planning Committee. PAS suggest that in these situations they will need to be extremely careful and will need to withdraw when the Committee is considering the Council's own schemes or other applications that they have been seen to support previously.

## **6. DEVELOPMENT PROPOSALS**

- 6.1 Planning applications or proposals for changes to a Local Plan submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local guidance 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 and ensure probity in decision making; and
  - the Council's Monitoring Officer should be informed of such proposals.

- 6.2 A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as an applicant, should also not seek to improperly influence the decision.
- 6.3 Proposals for a Council's own development should be treated with the same transparency and impartiality as those of private developers.

## **7. LOBBY OF AND BY COUNCILLORS**

### **Reporting on Local Concerns**

- 7.1 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.
- 7.2 As the Nolan Committee's 1997 report states: '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'.
- 7.3 Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, and so care and common sense must be exercised by all parties involved.

### **Expressing Opinions**

- 7.4 The common law permits predisposition. However it remains good practice that, when being lobbied, councillors (members of the Planning Committee in particular) should try to take care expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all the application materials and arguments for and against the development proposal.
- 7.5 In such situations, a councillor could restrict themselves to giving advice about the process and what can and cannot 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 they have heard all the relevant arguments, and have taken into account all relevant material and planning considerations at committee.

### **Conduct at Committee**

- 7.6 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 from the meeting once any public or ward member speaking opportunities have been completed. This is 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.



- 7.7 It is very difficult to convey every nuance of these situations and get the balance right between the duty to be an active local representative, and the need 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. Again, where there are concerns, advice should immediately be sought from the Local Authority's Monitoring Officer.

## **Local Codes**

- 7.8 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; and
  - 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.
- 7.9 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.

## **Gifts and Hospitality**

- 7.10 Councillors and officers should be cautious about accepting gifts and hospitality in general and especially where offered by lobbyists. It is not enough to register such gifts. Any councillor or officer receiving offers over an agreed value should let the Council's Monitoring Officer know, in writing, and seek advice as to whether they should be accepted or declined. Councillors and officers involved in planning decisions should not accept over-frequent or over-generous hospitality, especially where from the same organisation. They should always ensure that acceptance of such hospitality does not constitute a conflict of interest. Guidance on these issues should be included in the local Code of Conduct, and the Local Government Ethical Standards Report suggests adherence to consideration be given to the purpose of the hospitality, proportionality and the avoidance of any conflict of interest.

## **8. DISCUSSIONS BEFORE A DECISION IS TAKEN**

### **Early Engagement and Pre-application Discussions**

- 8.1 Early councillor engagement is encouraged to ensure that proposals for sustainable development will lead to settlements that communities need. This

guidance is intended to reinforce councillors' community engagement role whilst maintaining good standards of probity to minimise the risk of legal challenges. It is also important to encourage good decision-making that is transparent and upholds public confidence in the planning system. Ultimately, the public are a critical part of the planning process and the role of councillors provides democratic legitimacy for decisions.

- 8.2 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.

### **Avoiding Predetermination**

- 8.3 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. The Localism Act 2011 (as amended) acknowledges 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.
- 8.4 There is a difference between being predisposed to the planning policies set out in the NPPF or adopted development plan principles such as delivering housing, sustainable transport or good design and expressing views on this – and being predetermined in relation to a specific case.
- 8.5 Some local planning authorities have, or encourage, public planning forums to explore major pre-application proposals, with the developer outlining their ideas and inviting 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 such discussions still need to avoid predetermination.
- 8.6 Councillor involvement can help identify issues early on, help councillors lead on community issues, and help to make sure that issues do not come to light for the first time at committee. PAS recommends a 'no shocks' at committee approach.

### **Meetings and Discussions Before a Decision**

- 8.7 The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.
- 8.8 Discussions before a decision is taken should ensure:
- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are 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 is given by officers based upon the Development Plan

and material planning considerations.

- That councillors avoid giving separate advice on the Development Plan or other material planning considerations, as they may not be aware of all the issues at an early stage. Councillors should not 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.
- A commitment is made that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

8.9 Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. 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. 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.

8.10 Councillors also talk regularly to constituents to gauge their views on matters of local concern – which can include planning applications. The Nolan Committee acknowledged that keeping a register of these conversations would be impractical and unnecessary; however, local planning authorities should think about when discussions should be registered and notes written.

### **Other Approaches to Early Engagement**

8.11 Local planning authorities have other mechanisms to involve councillors in preapplication discussions including:

- committee information reports by officers;
- 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); and
- ward councillor briefing by officers on preapplication discussions.

8.12 Similar arrangements can also be used when local planning 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.

## **9. OFFICER REPORTS**

9.1 Officer reports are a critical part of the decision-making process. They can also be difficult to write, as officers have to grapple with complex and technical information such as viability and daylight and sunlight analysis along with matters such as any equalities impacts of the proposed development. Conclusions can be finely balanced, having exercised planning judgement as to the merits of a scheme.

9.2 Sometimes, the Local Planning Authority will engage external consultants to interrogate the Applicant's material on specialist areas of expertise, and advise the officer accordingly. The presentation of this information in the report is

particularly important – along with the availability of any background papers. Whilst the Courts are generally reluctant to interfere in the exercise of planning judgement, officer reports can nonetheless be fertile ground for judicial review challenges. This is particularly so where there is a risk that the officer may have inadvertently misled the Committee, therefore tainting the resulting decision.

- 9.3 Careful reviews of draft reports, which may involve consultation with the Council's Legal Team, is always recommended. Similarly, appropriate interventions by the Legal Officer at the Committee meeting itself might be needed in order to correct any misconceptions on specific issues.
- 9.4 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 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, where relevant, 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 failure to do so may constitute maladministration or give rise to a 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 Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990.
  - Any oral updates or changes to the report should be recorded.

## **10. PUBLIC SPEAKING AT PLANNING COMMITTEES**

- 10.1 Whether to allow public speaking at a Planning Committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film and broadcast committee meetings. 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.
- 10.2 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.
- 10.3 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 Local Planning Authority in writing.
- 10.4 New documents should not be circulated to the Committee as 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. Late information might lead to a deferral. This should be made clear to those who intend to speak.

10.5 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.

## **11. DECISION WHICH DIFFER FROM A RECOMMENDATION**

11.1 The law requires that decisions should be taken in accordance with the Development Plan, unless material considerations (which specifically include the NPPF) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990).

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

11.3 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 non-material considerations which might cause local controversy, will rarely satisfy the relevant tests.

11.4 Planning committees can, and do, make decisions which are different from the officer recommendation. Sometimes this will relate to conditions attached to the permission or planning obligations secured through a legal agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended). S106 legal agreement, or undertaking, includes obligations entered into by the developer, landowner and other relevant parties to mitigate the impacts of a development proposal.

11.5 Sometimes the Committee's decision 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.

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

- If a councillor is concerned about an officer's recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken however to ensure that this does not lead to predetermination of a decision.
- 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 reasons tested and discussed.

11.7 If the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 planning 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, which should be set in the context of the Development Plan or the NPPF. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of

a likely appeal outcome based on policies set out in the Development Plan and the NPPF, and chances of a successful award of costs against the Local Authority, should one be made.

- 11.8 The decision is ultimately the Committee's; however, it is imperative that the decision is made with regard to relevant planning considerations.
- 11.9 All applications that are clearly contrary to the Development Plan must be advertised as such, and are known as 'departures' from the Development Plan. 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.
- 11.10 The application may then have to be referred to the relevant Secretary of State, and/or the Mayor, depending upon the type and scale of the development proposed (Section 77 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.
- 11.11 The common law on giving a statement of reasons for decisions has developed significantly in the last few years. It is important that the report that supports planning decisions clearly shows how that decision has been reached – whether for the grant or refusal of permission.
- 11.12 Whilst a committee giving reasons for refusing an application might be common, it may also be sensible to give reasons for resolving to grant permission, and having those accurately captured in minutes of the meeting. This may be particularly so where there is an overturn of an officer recommendation and/or where the application is particularly controversial due to planning policy protections and/or weight of objections. Where the development is EIA development, there is, in any event, a separate statutory requirement to give reasons for the grant of permission.
- 11.13 It should always be remembered that the public have a stake in the planning process and are entitled to understand how decisions are reached.

## **12. COMMITTEE SITE VISIT**

- 12.1 National standards and local codes also apply to site visits. Local planning authorities 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; and
  - a record should be kept of the reasons why a site visit is called.

12.2 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; and
- the proposal is particularly contentious.

12.3 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.

12.4 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.

### **13. REVIEWING PAST PLANNING DECISIONS AND THE OUTCOMES**

13.1 It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development, ideally on an annual or more frequent basis. 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.

13.2 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.

13.3 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.

### **14. COMPLAINT AND RECORD KEEPING**

14.1 All local planning authorities should have a complaints procedure which may apply to all of its activities. Local planning authorities should also consider how planning related complaints will be handled, in relation to the Code of Conduct adopted by the Authority.

14.2 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.

## LIST OF REFERENCES

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