

Guidance for Members and Officers on Planning Matters

Updated May 2015

1. Introduction

- 1.1 This guide should be read in conjunction with the Constitution, in particular the Members' Code of Conduct, the rules on the declaration of interests and both should be borne in mind when considering planning applications.
- 1.2 This guidance applies to all Lewes District Councillors and staff involved in the planning process and is not just of relevance to councillors sitting on the Planning Applications Committee.
- 1.3 It should be noted that the role of the planning system is to regulate the use and development of land in the public interest. Accordingly, planning decisions must be seen to be impartial and properly justified. The planning system can only operate effectively if there is trust among the various stakeholders: the public, applicants, developers, elected members and officers.
- 1.4 Councillors and staff are requested to read this guidance thoroughly and to put it into practice consistently. Failure to do so without good reason could be taken into account in investigating allegations of impropriety or maladministration.

2. Role and conduct of members and officers

- 2.1 Elected members and officers have different but complementary roles. Both serve the public but members are accountable to their electorate and officers accountable to the Council as a whole, as their employer.
- 2.2 The main duty of elected members is to represent their constituents as a whole, including those who did not vote for them. This is especially relevant to planning matters where often those decisions are taken against the interests of individuals, but for the benefit of the wider community.
- 2.3 Officers who are chartered town planners must act in accordance with the Royal Town Planning Institute's (RTPI) Code of Professional Conduct and breaches of that code will be subject to separate disciplinary action by the Institute. All officers are expected to follow the Council's Code of Conduct for Employees as well as this guidance.
- 2.4 Elected members are free not to follow the advice of the professional officers. Professional officers may also have a change of opinion but this must be based on a professional judgement and they must not be allowed to be influenced by elected members or other officers to change their opinion where this does not genuinely represent their professional view.

3. Training on planning matters

- 3.1 All members of Planning Applications Committee are required to receive training on planning and conduct matters prior to being involved in the work of the committee.

The Head of Democratic Services will set a training plan for all members after consultation with the Specialist Officer - Development Management and in accordance with the priorities in the Member Development Plan. Councillors who are not members of the Planning Applications Committee are welcome to attend such training if they wish to develop their knowledge of the process.

4. Declarations of Interest

- 4.1 Members need to register and declare certain interests and this is covered in the Code of Conduct for Members.
- 4.2 While it is for the individual councillors to decide whether they have an interest to declare, the potential consequences of a failure to declare an interest should always be borne in mind as should personal bias and a closed mind as these can have serious consequences for the elected member, the decision and the Council.
- 4.3 Failure to observe this guidance could result in the member being reported to the Council's Standards Committee.
- 4.4 Failure to declare an interest could result in the decision being judicially reviewed by the courts and revoked. The costs of defending a decision in a court can be significant. It can also lead to a successful appeal against refusal of planning permission and the failure of an elected member to correctly declare an interest could be used to support an appellant's case that the refusal was unreasonable. This could have consequences for the appeal against the Council and the chance of costs being awarded against the Council.
- 4.5 Failure to declare an interest could also lead to a complaint being made to the Local Government Ombudsman who can recommend the making of a financial payment if a finding of maladministration is made.
- 4.6 Elected members must declare all interests in the matter for consideration and where appropriate withdraw from the meeting. The nature and the existence of their interest should be clearly declared. Further information is available on the code of conduct which applies to all council meetings.

5. Bias

- 5.1 As outlined in the introduction, it is important that councillors who are making decisions do not approach any decisions with a closed mind. This rule applies if an elected member does or does not have an interest in the matter. Decisions must be made strictly on planning grounds and have considered all relevant factors especially those outlined in the officer's report. The appearance of bias is particularly likely where a councillor has expressed a settled view on a planning matter in advance of a meeting.
- 5.2 The Localism Act has clarified that there is a difference between 'predisposition' and 'predetermination'. An elected member is biased if they have or appear to have predetermined a planning application in so much that they have made up their minds before considering all the evidence or if they choose to ignore some evidence.
- 5.3 An elected member can express a predisposition in favour or against a planning application without being biased, so long as the member has not closed their mind and this is clear to those involved.

- 5.4 It should be noted that perception is equally important so members should clearly avoid giving the appearance both by verbal and non-verbal communication that they have closed their minds to an issue.
- 5.5 Where it is agreed to defer a matter to a future meeting, issues raised in debate prior to the deferral do not indicate necessarily that a member will be biased when the matter is reconsidered unless this is expressly stated for example by saying 'nothing that can happen before the next committee meeting will convince me that this is the right course of action'.

6. Role as a Ward Councillor

- 6.1 Members have an important role as ward councillors in representing those living in their ward's views on planning applications.
- 6.2 A member may request that an application be determined by the Planning Applications Committee rather than it being dealt with by officers under delegated powers. Such requests must be made within 14 days of the application appearing on the weekly list, and will be granted **provided** that such request is based on valid planning reasons and that the Chair of the committee agrees to take the matter at the meeting.
- 6.3 Ward councillors can also make representations without limit of time to the Planning Applications Committee.
- 6.4 Where the ward councillor is also a member of the Planning Applications Committee they can either choose to refer those interested in the application to their ward colleague (to make representations on their behalf at the committee as a ward member) or they can choose to remove themselves from the committee for the whole meeting to make representations to it as a ward member.

7. Town and Parish Council Membership

- 7.1 Some District Councillors are also Parish or Town Councillors. This may present issues where the Parish or Town Council is consulted on an application or policy matter especially if the councillor comes under pressure to indicate support or objection to a proposal in advance of a decision by the Planning Applications Committee.
- 7.2 It is possible that a councillor in this position could vote in a different way at the Planning Applications Committee, when all relevant information is available in the officer's report.
- 7.3 District Councillors who serve both Councils are advised;
- That councillors should clearly explain to Parish and Town Councils that they do not form a final view upon planning applications until the relevant information is before them at a formal meeting of the Planning Applications Committee,
 - That they can continue to offer advice and assistance when planning matters are considered by the Parish Council but they should avoid giving any final indication of support or objection in advance of a decision by the District Council,

- In particular, they should emphasise to Parish/Town Councils that in the organisation of Parish/Town Council business the impartiality of District Councillors must not be prejudiced by the Parish/Town Council requiring or expecting District Councillors to speak or vote on planning matters or in any other way to express a final view on a proposal in advance of a decision by the District Council.
- That they can pass on the views of the Parish Council and explain the reasons for those views when the District Council considers the application.

8. Development proposed by the Council or a Council owned or controlled company

- 8.1 Planning legislation allows Councils and bodies controlled by them to submit and determine development proposals which they intend to carry out themselves. These shall be considered in the same way as those put forward by private developers.
- 8.2 Decisions shall be taken strictly on planning merits and without regard to any financial or other gain that the Council may accrue if the development is allowed. The Council should treat such applications with transparency and on an equal basis with all other applications.

9. Development proposed by individual members or officers or persons related to them

- 9.1 Serving elected members or officers should never act as agents for another person in pursuing planning applications within the District or which materially affect the District. If members or officers submit their own proposal to the Council they should take no part in the processing and determination of that proposal and they should not be involved in the processing and determination of applications submitted by close family, personal friends or business associates. The Specialist Officer – Development Management should be informed of all such proposals as soon as they are submitted.
- 9.2 These applications will be determined in line with the processing of all other applications but with the relevant elected member or officer excluded from the process.
- 9.3 Officers must not deal with development proposals and planning applications in which they have an interest.

10. Lobbying of and by members

- 10.1 Lobbying is a necessary and legitimate part of the democratic and planning process. Those affected or who have strong views on a proposal for development will often try to canvass the Planning Applications Committee to get members of the committee to share those views. The time though for individual members of the committee to make a decision on a proposal is at the committee meeting when all the relevant information is available and has been properly considered.
- 10.2 Elected members are free to listen to a point of view about a particular proposal and to provide advice (details of relevant contact officers, how to register to speak etc.). They should be careful however to reserve their own final judgement until the Planning Applications Committee meeting.

- 10.3 Elected members should not circulate unofficial papers and other information not previously considered by officers at committee meetings.
- 10.4 Councillors should not lobby other councillors on proposals in a way that could lead to their failing to make an impartial judgement on the planning merits when making decisions at council committees, nor should councillors put pressure on officers for a particular recommendation.
- 10.5 If councillors consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will in turn advise the appropriate officer (usually the Director of Service Delivery).

11. Pre and post application discussions

- 11.1 Elected members on the Planning Application Committee need to uphold their position as impartial decision makers and it would not be appropriate for them to take part in pre or post application discussions with applicants regarding a proposed development.
- 11.2 It is reasonable for members to refer such discussions to the Specialist Officer – Development Management who can arrange a factual discussion of whether the application as proposed appears to be in line with the Council's approved planning policies.
- 11.4 During any pre-application discussions or meetings with the applicant, it will be made clear at the outset the Council will not, as a result of such discussion, be bound to make a particular decision and that any views expressed are provisional and not the formal decision of the committee.

12. Officers' reports to Committee

- 12.1 Officers' reports to the Planning Applications Committee will always be in writing. This will either be distributed with the agenda or the update note. In exceptional circumstances additional written information can be given to members up to the start of the meeting. Any oral information given to the committee will only ever be as clarification on issues raised or a response to questions raised - this will be recorded in the minutes.
- 12.2 Reports to the Planning Applications Committee will be accurate at the time of publication and provide all relevant information. They shall contain a reasoned assessment of the proposal and justification of any recommendation. Where alternative options are available these should be recorded with a reasoned assessment as to why they would not be desirable. If an officer's recommendation is contrary to the Development Plan the material considerations which justify this shall be set out clearly.

13. Decisions contrary to officer recommendation

- 13.1 The decisions at the Planning Application Committee can only be made with reference to the Development Plan and other material planning considerations. Decisions can only be made against officer recommendation on sound planning grounds and provided reasons are given which are clearly based on a material planning considerations. The correct place to seek changes to the Development Plan

is through any new or reviewed version of the plan - the committee should not seek to amend Council policy at Planning Applications Committee meetings.

- 13.2 Planning and legal officers present at the meeting must be allowed to explain to the committee the likely implications of a decision.
- 13.3 Where Councillors wish to propose a decision to refuse planning permission against an officer recommendation they should seek to outline the reasons for that decision. Where Councillors wish to make a decision to grant planning permission against an officer recommendation they should outline reasons for the decision and if applicable, propose conditions.
- 13.4 Councillors wishing to propose the committee make a decision contrary to the officer recommendation should contact the Specialist Officer – Development Management in advance of the committee meeting to seek advice on the proposed reasons and/or conditions they would like to propose and on the availability of any other appropriate potential grounds and/or conditions.
- 13.5 A councillor seeking to make such a proposal during a planning meeting should request a brief adjournment so they can seek advice on the proposed reasons and/or conditions as above.
- 13.6 Alternatively, in the case of grant planning permission against officer recommendation, a councillor may propose to delegate the decision to officers to approve, subject to them adding the relevant and necessary conditions to the decision notice.

14. Site visits

- 14.1 Site visits may be arranged by officers to take place prior to the committee meeting for major planning applications or more complex/controversial applications where it is considered that such a visit would assist in providing a greater understanding of the planning issues, to provide members' with information to aid the determination process, and as a fact finding exercise for members.

15. Complaints

- 15.1 Any complaints made about the planning process should be recorded and would normally be dealt with in the Council's Complaints Procedure. Where it is a complaint relating to standards or conduct it should be reported to the Council's Monitoring Officer.