

Planning Code of Good Practice

1 Introduction

- 1.1 This Planning Code of Good Practice guide replaces the previously published *Code of Practice for the Determination of Planning Matters* and does not supplement the *Members Code of Conduct*. This guide is primarily aimed at Plans Panel Members and the emphasis of it is to provide practical supportive advice to Members when dealing with planning matters, keeping decisions safe and mitigating the risk of possible challenge.

2 Roles and responsibilities

- 2.1 Members and officers have different but complementary roles in the planning process. Members have more than one role in the process – as Ward Members and as Panel Members.

2.2 Ward Members not on the Plans Panels

- 2.2.1 Ward Members who are not on the Plans Panel are in a position to represent the interests of their Ward when it comes to planning and related applications. Ward Members may:
- attend the Plans panel meeting as an observer
 - speak on applications, subject to the provisions in the public speaking protocol
 - speak on proposals at pre-application presentations to the plans panel, subject to the provisions in the public speaking protocol
 - get involved with pre-application meetings with officers and developers and in consultations on the draft heads of terms for section 106 agreements
 - request briefings from officers on applications

2.3 Members who are on the Plans Panels

- 2.3.1 The role of Members who are involved in the planning decision making process is to exercise their judgment properly on the planning application before them – and be seen to do this. In coming to a decision on a planning application Members should make this decision based solely on material planning considerations. Officer reports to the Plans Panels will identify what is regarded as material to a decision and if Members are unclear on what matters may or may not be material to a decision they should seek advice from officers.
- 2.3.2 Whilst Members must act within the law, the exercise of planning judgment is theirs and theirs alone. The Panel must take into account all relevant ministerial guidance, local plans (and related documents) and the advice of officers. The weight Members attach to the relevant considerations is a

matter of their planning judgment and Members should not give weight to non-planning related matters that may be raised by members of the public. Members are democratically accountable to their electors and to the wider public on whose behalf they act.

2.4 Officers

2.4.1 The Chief Planning Officer has a dual role in the decision making process. First of all he makes decisions on the majority of planning applications under delegated powers. Secondly he makes recommendations on planning matters which are determined by Members at Plans Panels. When making such recommendations the function of officers is to support and advise Members, ensure that any decision they make is lawful and identify any possible consequences of taking decisions.

3 Predetermination and Bias

3.1 In making their decisions Members of the Plans Panel should not be seen to side with either the applicant or the objector/s prior to the hearing of the application when all the relevant facts are known. Members are required to keep an open mind. This is a requirement of the law and a separate guidance note on predetermination and bias to assist Members in complying with this complex area of legislation and case law is attached as appendix 1.

4 Development Proposals Submitted by Members and Employees

4.1 Where development proposals are submitted by Members and employees in respect of their own property or land it is particularly important that the Council ensures that such applications are handled in a way that gives no grounds for accusations of favouritism.

4.2 Serving Members of Council who submit applications or act as agents should play no part in the decision making process for that application. Further they should not take part in the processing of the application nor should they lobby employees or officers either directly or indirectly.

4.3 Any planning officer who submits an application for their own property or on behalf of a friend or family member will inform the Chief Planning Officer in writing and such applications will be determined by the Plans Panel.

4.4 Officers are required under the Employee Code of Conduct to make a declaration by completing the Register of Interests form, declaring any matters which may conflict with duties as an employee and their personal interests such as:

- any financial interest in any planning application;
- other interest where others may think that a conflict of interest may arise, such as for proposals near their residence

- 4.5 In circumstances where there is a conflict of interest, the officer has no involvement in any part of the decision making process.

5 Member contact with applicants and developers

- 5.1 The Government encourages applicants to enter into pre-application discussions. Such discussions are a normal part of the planning process to seek further information and to seek to identify improvements to proposals at an early stage. These discussions and meetings provide an opportunity for the potential applicant to receive advice and information about the policy and technical requirements that must be met and advice on design, on community engagement and other issues which may improve the chances of an application being acceptable to the Local Planning Authority (LPA). However, it should be made clear that any guidance given will not bind the LPA to making a particular decision.
- 5.2 A protocol for pre-application discussions with local communities and Ward Members¹ exists to ensure that discussions take place early in the process within clear parameters and governance arrangements.
- 5.3 To minimise the prospect of challenges based on predetermination and bias, the guidelines below should be followed:
- It will always be made clear that any information or statements made cannot bind the LPA to making a particular decision.
 - Wherever possible, Members should be accompanied by an officer when meeting with applicants.
 - Members should refer applicants who approach them for advice to officers.
 - A written record of the discussion should be made by the officer.
 - Plans Panel Members are free to take part in meetings with potential applicants or their agents but extra care is needed to avoid any perception of predetermination or bias.

6 Plans Panel meetings

6.1 Attendance at meetings

- 6.1.1 It is important to ensure that Members taking planning decisions are in possession of all the relevant facts, including matters pointed out or that come to light during a site visit by Plans Panel, matters that may have been raised during public speaking and matters that may have been discussed and considered by Plans Panel on earlier occasions. Attendance of Members on all occasions during the application phase² i.e. once the application has been submitted, will not only demonstrate that Members are fully informed

¹ Leeds City Council Pre Application Engagement- a guide to best practice, 2013

but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised.

- 6.1.2 If Members have not attended on each occasion during the application phase and want to take part in the decision on an application, they should consider whether or not they are fully appraised of all the facts and relevant information necessary to properly reach a decision.

6.2 Conduct at meetings

- 6.2.1 The Chair of the Plans Panel is responsible for the conduct of the meeting in accordance with the relevant Council Procedure Rules and for the effective delivery of business.

- 6.2.2 The Plans Panel meetings are open to the public and they are often well attended particularly when there is a contentious application on the agenda. Meetings are also attended by the applicants/agents and/ or other parties supporting an application and/or objectors against an application. It is important to demonstrate that decisions have been made fairly and transparently and in the correct manner. Any debate should be confined to the planning merits of the matter.

6.3 Decisions different to the officer recommendation

- 6.3.1 Decisions on planning applications must be taken in accordance with the Development Plan unless material considerations indicate otherwise. From time to time the Panel may attach different weight to the potential planning considerations and therefore, take a decision which differs from the officer recommendation.

- 6.3.2 Where this occurs, Members must be able to give a clear basis and reason for not taking the officer recommendation. It is important to ensure, as far as possible, that any decision made will be capable of surviving a legal challenge or appeal. So in the event that this occurs the Chair will ensure that the following principles are followed:-

- When a planning application has been deferred following a resolution not to accept the officer recommendation, the Chair shall put to the meeting a proposed statement of why the recommendation is not considered acceptable, which, when agreed by the Panel, will be formally recorded in the minutes.
- In these circumstances, at a subsequent meeting, the Chief Planning Officer will respond in a further written report the provisional reasons formulated by the Panel for granting or refusing permission. If the Plans Panel is still of the

² The application phase does not include the pre-application stage, but following the submission of a planning application will include each of the occasions when an application comes before Panel, including presentations, position statements, issues papers and formal site visits. For the avoidance of doubt outline applications and detailed or reserved matters applications, or a new application for an amended scheme are distinct and separate applications and attendance is not required across both or all of these.

same view, then it shall again consider its reasons for the decision and a summary of those planning reasons shall be given, the reasons will then be recorded in the minutes of the meeting.

- The officer attending the meeting should be given the opportunity to explain the implications of the decision.
- Members should ensure they clearly identify and understand the planning reasons leading to this conclusion. These reasons must be given before the vote and be recorded.

6.3.3 Where an appeal to the Secretary of State is subsequently lodged against a decision which was different to the officer's recommendation, planning officers will act as a professional witness at the inquiry or hearing unless there is reason to suggest that this would prejudice the outcome. However, it should be noted that where the Planning Officer giving evidence is the officer that recommended approval, then their role is that of advocate for the Council's case.

6.4 Deferred applications

In some cases, planning applications may come before the Panel on more than one occasion. This is particularly the case with larger schemes where a pre-application presentation and/ or a position report, (a report which describes the stage a proposal has reached and the main issues involved) is presented to the Plans Panel, or when an application is deferred for a site visit or further information. Where an application is deferred then the reasons for deferral will be clearly stated and minuted.

6.5 Public speaking

6.5.1 All Members are entitled to speak at a panel meeting in accordance with the provisions in the protocol for public speaking at the plans panels³. The length of time Members may speak for and at what stage of the process is outlined in this protocol.

6.5.2 Where Members have a disclosable pecuniary interest in the application then they must not speak in relation to the application, even as a member of the public. Instead, the Member must leave the room during that item and not take any part in the discussion or vote on the application, unless they have a dispensation from the Head of Paid Service.

6.5.3 Speakers will only be entitled to address the Panel on one occasion unless the application has been significantly changed or amended. In these circumstances, speakers will only be able to speak about new matters or the amended details and not about matters which have been previously considered by the Panel.

6.5.4 Speakers should not raise any substantial new information at a meeting (including correspondence, other documents, photographs or models) at the

³ Leeds City Council Protocol for Public Speaking at Plans Panels

Plans Panel meeting, as this does not give all parties adequate time to consider and respond to the submissions, and Members of the Panel will not be able to give proper consideration to issues raised in the material.

- 6.5.5 It is important that Members of the public are not permitted to communicate with or pass messages to individual panel Members as this may give the appearance of partiality.

7 Site Visits

- 7.1 Members should try to attend organised site visits as they can be a helpful part of the decision making process.
- 7.2 Members' site visits are a fact-finding exercise which allow Members to gain further information on a specific issue(s), to assist Members to gain a better understanding of the proposal and can help to make a more informed decision. Usually site visits are agreed in consultation with the Chair in advance and will take place on the morning of the Plans Panel meeting.
- 7.3 Members are able to request that a site visit takes place, but Members will need to consider and provide planning reasons why visiting the site is of benefit. At plans panel meetings the name of the member requesting the visit and the reasons for the visit will be recorded as part of the minutes. A site visit is only likely to be of benefit if:
- There are significant policy or precedent implications and specific site factors need to be carefully addressed; and/or
 - Details of the proposed development cannot be ascertained from plans and any supporting information to Members satisfaction at the Plans Panel; and/or
 - Where design considerations are of the highest importance particularly in relation to the surrounding locality; and/or
 - There is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- 7.4 Site visits will operate as follows:
- Site visits generally take place on the morning of the Plans Panel meeting.
 - The site visit is under the control of the Chair of the Plans Panel
 - Members should listen and ask questions of fact from the applicant or other parties, but should avoid entering into a debate concerning the merits of the proposal
 - Members should remain together as a group throughout the visit
 - It is recommended that Members who declare a disclosable pecuniary interest in such items should not attend the Committee site visit in relation to that item

- 7.5 Site visits are not intended as an opportunity for objectors, applicants or others to lobby Members or argue their case. Members should remain impartial; they must not appear to favour one or other party and must avoid reaching a final decision until all views have been presented at the subsequent Plans Panel meeting.

8 Member training

- 8.1 It is important that all Members involved in the planning process are aware of their role in the process and the policy and legal framework in which they operate.
- 8.2 Therefore, Members serving on Plans Panel must attend³⁴ as a minimum, the following compulsory training each year:
- For Members new to the Plans Panels two sessions comprising a governance and conduct session and mid-year update session
 - For experienced Members of the Plans Panels, a single mid-year update session
- 8.3 A record of attendance for the compulsory training will be maintained by Member Development Services and a list provided to Party Whips for monitoring.
- 8.4 Other specialised training will be offered periodically throughout the year which will enhance and extend Members' knowledge of planning matters. These are not compulsory but will assist Members in carrying out their role on the Plans Panel.

9 Review and updating this guide

- 9.1 The responsibility for the review and updating this planning code of good practice will be undertaken by the Chief Planning Officer in consultation with a meeting of the Joint Plans Panel⁴ on an annual basis. Ad hoc reviews may occur if there are significant changes to be made, again these will be considered by a meeting of the Joint Plans Panel.

⁴ As set out in Article 8.2.2 of the Council's Constitution, Members of the Plans Panel must complete all compulsory training and shall not sit as a Member of the Panel unless such training has been undertaken in accordance with the Council's prescribed training programme.

⁴ An informal meeting bringing together the Council's Area Plans Panels, City Plans Panel and Development Plan Panel

Guidance Note On Bias And Predetermination in the Planning Process

What is Bias and Predetermination?

The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.

Decision makers are entitled to be **predisposed** to particular views. However, **predetermination** occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.

The leading case on local authority bias and predetermination⁵ acknowledges the difference between judges sitting judicially and councillors making decisions in a democratic environment. Given the role of councillors, there must be 'clear pointers' before predetermination is established.

Section 25 Localism Act 2011

Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –

- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
- (b) the matter was relevant to the decision.

The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.

Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision, (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.

The case law has also made it clear that the words used by particular members and the interpretation put on those words is of particular importance. So care still needs

⁵ (R(Lewis)v Persimmon Homes Teesside Ltd [2008] EWCA Civ 746

to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

Guidance

With this in mind:-

- It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
- With this in mind, if you do comment on a development proposal in advance of the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Panel meeting.
- Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.

Concluding Comments

As a councillor operating within a political environment you should not be afraid to express views on issues. However, in doing so it is important that you avoid giving the impression that you have already made up your mind and that your part in the decision is a foregone conclusion.