

## Planning Code of Good Practice

### 1 Introduction

- 1.1 This Planning Code of Good Practice is primarily aimed at Members of Plans Panel to provide practical supportive advice to Members when dealing with planning matters to ensure decisions are lawful and to mitigate the risk of possible challenge. It does not supplement the Members Code of Conduct.

### 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 Plans Panel Members.

#### 2.2 Ward Members not appointed to a Plans Panel

- 2.2.1 Ward Members not appointed to a Plans Panel, are able to represent the interests of their Ward in respect of planning matters and related applications.

- 2.2.2 Ward Members may:

- attend the Plans Panel meeting as an observer.
- speak on pre applications, position statements and applications subject to the provisions in the Public Speaking Protocol.
- nominate a community representative<sup>1</sup> to speak on their behalf in respect of pre applications and position statements.
- attend pre-application meetings with officers and developers and in consultations on the draft heads of terms for section 106 agreements: and
- request briefings from officers on applications

#### 2.3 Ward Members who are appointed to a Plans Panel

- 2.3.1 Ward Members appointed to a Plans Panel must choose which role they wish to act in when involved in a planning application. Where a Member is to attend the Plans Panel to determine a planning application, they should avoid becoming involved in that matter in their Ward Member role.

- 2.3.2 The role of Members appointed to a Plans Panel is to consider all the planning issues and merits of each application, to exercise their judgment and then make a decision and be seen to do this. In determining a planning application Members should make their decision based solely on material planning considerations. Officer reports to the Plans Panels will identify what is

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<sup>1</sup> a representative from a Town or Parish Council or Neighbourhood Forum, who a Ward Member has nominated to speak on their behalf.

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.

2.3.3 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 material considerations including the Leeds Local Plan, the National Planning Policy Framework, planning guidance and the advice of officers.

2.3.4 Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The weight Members attach to the relevant considerations is matter of their planning judgment. Members should not give weight to non-planning related matters that may be raised by members of the public.

## **2.4 Officers**

2.4.1 The role of officers is to advise Members.

2.4.2 The role of the Chief Planning Officer (CPO) is to offer professional support and advice to Members to ensure that any decision made is robust and supported by clear evidence.

2.4.3 The CPO must also identify any possible consequences that may arise from decision proposed by Members.

## **3 Predetermination and Bias**

3.1 Members need to avoid any appearance of bias or of having predetermined their view before making a decision. Prior to making decisions, Members of a Plans Panel should remain open minded until such a time they have been presented with all relevant facts. This is a legal requirement and a separate guidance note on predetermination and bias to assist Members in complying with this complex area is attached at Appendix 1 to this Code.

## **4 Development proposals submitted by Members and employees who carry out a Development Management function**

4.1 Where development proposals are submitted by Members or employees who carry out a Development Management function in respect of their own property or land, it is particularly important that the Council ensures that such applications are handled in a transparent way that gives no rise to grounds for accusations of impropriety.

4.2 Members or officers who submit applications in a personal capacity (or who act

as agents for applicants) should not be involved in the decision-making process for that application. This includes having no involvement in the processing of the application and they should not lobby officers either directly or indirectly in respect of that application.

- 4.3 The determination of applications submitted in a personal capacity by or on behalf of Members, Directors or any other officer who carries out development management functions will be determined by the relevant Plans Panel. All such applicants will inform the Chief Planning Officer in writing that they have submitted an application.
- 4.4 Officers are required under the Employee Outside Interest Policy to declare relevant outside interests by completing a Register of Interests form, declaring any matters which may conflict with duties as an employee and their personal interests such as:
- membership of organisations the council needs to know about
  - associations with other businesses
  - beneficial interests in land and property
  - certain personal relationships; and
  - financial interests in council contracts and sponsorship
- 4.5 In circumstances where a conflict of interest arises the officer shall have 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 as well as 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 Pre-application engagement between a potential applicant, Members and local communities can benefit all parties and are therefore encouraged. Members can help identify issues early on, helps Members lead on community issues and helps to make sure that issues don't come to light for the first time at Plans Panel. 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.

5.3 To minimise the prospect of challenges based on predetermination and bias, the guidelines below should be followed:

- It should always be made clear that any information or statements made cannot bind the LPA to making a particular decision;
- Members of Plans Panel should not agree to any meetings with applicants, developers or groups of objectors unless accompanied by an officer;
- All Members should refer applicants who approach them for advice to officers;
- If Members do express an opinion to objectors or supporters, it is good practice to make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at the Plans Panel.

## **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 that come to light during a site visit by a 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. A Member's attendance at Plans Panel on each occasion<sup>2</sup> an application is discussed will demonstrate that a Member is fully informed before making a decision and will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised.

6.1.2 Where a Member has not attended Plans Panel on each occasion the application is considered they may still take part in the decision, provided they consider that they are fully informed of all the facts and relevant information necessary to reach a sound 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 Plans Panel meetings are open to the public and are also webcast live, with

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<sup>2</sup> 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

a visual and audio record being in the public domain. Applicant's (or their agent) and other parties supporting or objecting to an application may also be in attendance.

- 6.2.3 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 Members of the Plans Panel may attach different weight to planning considerations to that afforded by officers and therefore be minded to 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 (based on evidence presented) for not following the officer recommendation. Any reasons for refusal must be justified against the development plan and other material considerations. It is important to ensure, as far as possible, that any decision made will be capable of withstanding a legal challenge or appeal.
- 6.3.3 If this occurs, the Chair, following advice of officers, will consider whether a motion for deferral to another meeting to further test and consider the proposed reasons is required.
- 6.3.4 In such circumstances the lead officer will provide a summary of Members reasons for not following the officer's recommendation, which, when agreed by the Plans Panel, will be formally recorded in the minutes and determination of the application will be deferred.
- 6.3.5 At a subsequent meeting, the Chief Planning Officer will respond in a further written report to the provisional reasons formulated by the Plans Panel for granting or refusing permission. The report will include officer advice on the merits of each reason proposed and refer to relevant evidence as appropriate. If necessary, the report will advise Members of the robustness of the reasons proposed together with any associated risks (including costs awards).
- 6.3.6 Following consideration of the further information, Plans Panel shall resolve how it wishes to determine the application. Members should ensure they clearly identify and understand the planning reasons leading to this conclusion. These reasons must be given before the vote and shall be recorded.
- 6.3.7 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 appeal 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**

6.4.1 In some cases, planning applications may be considered by Plans Panel on more than one occasion. This is particularly the case with larger schemes where a pre-application presentation or a position statement, (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 for further information.

6.4.2 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 Plans Panel meeting in accordance with the provisions in the protocol for public speaking at the plans panels<sup>3</sup>. The length of time Members may speak for and at what stage of the process is outlined in that Protocol.

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<sup>3</sup> [Leeds City Council Protocol for Public Speaking at Plans Panels](#)

## **7 Site Visits**

- 7.1 Members should 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 on a specific issue(s), to assist Members to gain a better understanding of the proposal and 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 the deferral of an application to allow a site visit to take place, but Members will need to consider and provide planning reasons why visiting the site is of benefit.
- 7.4 At Plans Panel meetings the name of the Member requesting deferral of the application to allow for 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, digital tools, documents 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.
- 7.5 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
  - Members who declare a disclosable pecuniary interest in an application must not attend the site visit in relation to that application.

7.6 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 party and must avoid reaching a final decision until all views have been presented at the 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 (and substitutes) serving on Plans Panel must attend<sup>3</sup> as a minimum, the following compulsory training each year:
- For Members newly appointed to a Plans Panel, two sessions comprising a governance and conduct session and mid-year update session;
  - For experienced Members of 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 Group Whips for monitoring.
- 8.4 Other specialist training may 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 review and updating of this document will be undertaken by the Chief Planning Officer in consultation with a meeting of the Joint Plans Panel<sup>4</sup> as and when required.

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<sup>3</sup> 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.

<sup>4</sup> 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 courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.

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

The leading case on local authority bias and predetermination<sup>5</sup> acknowledges the difference between judges sitting judicially and Members making decisions in a democratic environment. Given the role of Members, 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 Member has given a view on an issue, this, considered in isolation, does not show that the Member has a closed mind on that issue. So, the mere fact that a Member has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that Member from being able to participate in discussion of that issue and to vote on it.

However, the use of the words 'just because' in section 25, suggests that other factors when combined with statements made etc. can still give rise to accusations of predetermination.

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This has also been the approach that the courts<sup>4</sup> 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 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;
- 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; and
- 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 Member 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.

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