

Staffordshire County Council's Planning Committee Members' Guidance Protocol (updated February 2013)

1. Introduction

- 1.1 One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons.
- 1.2 The aim of this Guidance Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision of the Planning Committee has been unfair, biased, partial or not well founded in any way. The role of a Member of the Planning Committee (a Member) involves balancing representation of the interests of constituents and the community with the need to maintain impartial decision-making.
- 1.3 This Guidance Protocol applies to planning enforcement matters or site specific policy issues as well as to planning applications.
- 1.4 If a Member (or Local Member) (defined at paragraph 3.1 (a) and (b)) has any doubts about the application of this Guidance Protocol to his own circumstances he should seek advice from the Director of Law and Democracy as the Monitoring Officer as soon as possible and preferably well before any meeting takes place at which he thinks the issue might arise.

2. Background

- 2.1 This Guidance Protocol was last updated in June 2010. A further update is now required due to the coming into force of the Localism Act 2011 which, amongst other things, abolished the Standards Board for England and Wales. Nothing in this document takes precedence over the Staffordshire County Council Members' Code of Conduct (the Code of Conduct), adopted by the County Council on 19th July 2012.
- 2.2 The Code of Conduct sets out general provisions and obligations for Members, which must be complied with in all decision making, and this Guidance Protocol is intended to explain and supplement the Code of Conduct specifically in the context of planning decisions.
- 2.3 If a Member (or Local Member) does not abide by this Guidance Protocol he may put the County Council at risk of proceedings on the legality or maladministration of the related decision and, if the failure is also likely to be a breach of the Code of Conduct, be the subject of a complaint to the Audit and Standards Committee.
- 2.4 This Guidance Protocol applies to Members of Planning Committee and Local Members attending the Committee to speak on reports relating to applications in their area. (Note: Where a Local Member is not a Member of Planning Committee he has no right to vote).

3 Members entitled to participate in Planning Committee meetings

- 3.1 The following Members are entitled to participate in Planning Committee meetings:
- a) Those Members directly appointed to the Planning Committee (either at Annual Council or by way of a change of membership by the relevant political group leader and registered with the Director of Law and Democracy); and
 - b) The Local Member for each Division to which report(s) on an agenda relate. Local Members are permitted to address the Committee on reports relating to applications in their own Division only before the Committee deliberates on the report and to clarify any issues raised by responding to Committee Members questions, but such Local Members are not entitled to vote on the item in question.

4. Disclosable Pecuniary Interests

- 4.1 If a Member (or Local Member) has a disclosable pecuniary interest (as set out in paragraph 5 of the Code of Conduct) in a matter before the Planning Committee they must act in accordance with the Code of Conduct by notifying the Chairman and leaving the meeting room until consideration of the matter is concluded (as set out in paragraph 10 of the Code of Conduct) and not participate in the discussion or the vote taken unless a written dispensation has been given by the County Council (as set out in paragraph 9 of the Code of Conduct).
- 4.2 If a Member (or Local Member) has a disclosable pecuniary interest in an item he may record it by notifying the Director of Law and Democracy as the Monitoring Officer beforehand. Even if the Member does not attend the meeting the interest will be recorded and added to the Minutes.
- 4.3 If, during a Planning Committee meeting it becomes apparent to a Member (or Local Member) that they have a disclosable pecuniary interest in a matter which is to be or is being considered at that the meeting that is not included on the register of interests then;
- a) they must disclose the interest to the meeting (and act in accordance with paragraph 4.1 above), and
 - b) unless the interest is the subject of a pending notification, they must notify the Director of Law and Democracy as the Monitoring Officer of the interest within 28 days.
- 4.4 Examples of disclosable pecuniary interests would include ownership of land by a Member (or Local Member) or his partner which is the subject of an application to Planning Committee, or the employment of a Member's (or Local Member's) partner by an applicant for planning permission.

5. Other Relevant Interests

- 5.1 A Member (or Local Member) will have an Other Relevant Interest (which is not a disclosable pecuniary interest) in any matter to be considered or being considered at the Planning Committee where:
- a) a decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of the Member, his family or a person with whom he has a close association, or an organisation or body he belongs to, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which the Member has been elected; and
 - b) the interest is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Members' judgement of the public interest.
- 5.2 A Member (or Local Member) who has an Other Relevant Interest as described above shall make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent. There is an element of judgement in deciding whether a Member has an Other Relevant Interest.
- 5.3 If a Member has an Other Relevant Interest in the item he shall be entitled to speak but not vote and will leave the room after speaking.
- 5.4 If a Member has an Other Relevant Interest in any item in the Schedule of Delegated Items dealt with by the Director of Place and Deputy Chief Executive, the interest and the nature of the interest should be declared by the Member.
- 5.5 If the Member (or Local Member) is also a Cabinet Member for the County Council then when any County Council development proposal submitted in the name of the Cabinet is under consideration he should declare his Cabinet Membership, leave the room after speaking and should take no part in any vote. If the Member has a disclosable pecuniary interests for which he has no dispensation from the County Council he cannot speak and must leave the room whilst the Committee considers the matter.

6. Pre-determination and Predisposition

- 6.1 Members will often form an initial view (a predisposition) about a planning application early on in its passage through the system whether or not they have been lobbied. Under Section 25(2) of the Localism Act 2011 a Member 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.

- 6.2 This provision recognises the role of Members in matters of local interest and debate, but Members of the Planning Committee taking part in a decision on a planning matter should not make up their minds how to vote prior to consideration of the matter by the Planning Committee and therefore should not comment or make any commitment in advance as to how they intend to vote which might indicate that they have a closed mind (predetermination).
- 6.3 If a Member has made up their mind prior to the meeting and is not able to reconsider their previously held view, then they will not be able to vote on the matter. The Member should declare that they do not intend to vote because they have (or could reasonably be perceived as having) judged the matter elsewhere, so that this may be recorded in the minutes. The Member will be entitled to speak on the matter at the Planning Committee.

7. Lobbying

- 7.1 Members and Local Members may often be asked or tempted to form a judgement about a particular application, proposal or plan. However, it is important that a Member should not be vulnerable to an accusation of partiality because he or she has prematurely committed himself/herself one way or the other. Members should wait until all the information is available and presented to them at Planning Committee before reaching a final opinion on a matter.
- 7.2 When being lobbied about particular applications or proposals or policies/plans whether by telephone, text, social media, in writing or by email, a Member must avoid expressing an opinion which may be taken as indicating that he has already made up his mind (predetermination).
- 7.3 Members (or Local Members) are able to give procedural advice, e.g. suggesting that those who are lobbying him/her should speak/write to the case officer dealing with the planning matter.
- 7.4 There is nothing to prevent a Member expressing a preliminary opinion or giving preliminary support to a particular matter or indicating, directly or indirectly, what view they took or might take on the matter. The Member should make it clear that he will only be in a position to take a final decision after having heard and/or seen all the relevant information, evidence and argument put before the Planning Committee.
- 7.5 If a Member is also the Local Member they may be in a difficult position. In that situation the Member may decide to make up his mind on a matter before it comes to Planning Committee. If he does he will *be able to speak but will lose the right to vote* at the Planning Committee. This is because it would not be possible to argue convincingly that he has carefully weighed all the information, evidence and arguments presented when the matter came before the Planning Committee.
- 7.6 Members must not organise support for or opposition to a particular proposal or plan, or lobby other Members. If they do any of these things then they will be seen to have made up their minds before the Planning Committee meeting and will thus be unable to

vote on the matter at the meeting of the Planning Committee.

- 7.7 The striking of the balance in such cases is ultimately the responsibility of the individual Member and in doing so regard needs to be paid to the Code of Conduct. It is the responsibility of the Member alone to decide what view to take.
- 7.8 A political group meeting should not be used to decide how Members should vote.
- 7.9 Members should not put pressure on any officer for a particular recommendation, or to exercise a delegated power in a particular way; such activity can amount to bullying and may be reported to the Director of Law and Democracy as Monitoring Officer. (The Protocol on Officer / Member Relationships also refers.)
- 7.10 If a Member has been subject to excessive lobbying or pressure e.g. by being offered gifts he should notify the Director of Law and Democracy as Monitoring Officer.
- 7.11 A Member should not meet applicants/agents or objectors or supporters, either prior to or after the submission of a planning application, unless organised by an officer and with an officer present. Members will be aware that such meetings or presentations can be a form of lobbying where debate should not take place.
- 7.12 A Member approached (including by telephone, text, social media, in writing or by email) by an applicant, objectors or interested party to discuss issues relating to a particular matter is advised to notify the case officer dealing with the planning matter. This will be recorded on the relevant planning file by the case officer. The Member should advise those making the approach that this action will be taken.
- 7.13 Unless a Member has a disclosable pecuniary interest in the matter these arrangements do not prevent him from:
- a) being able to listen/receive viewpoints from residents or other interested parties;
 - b) making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and where the Member makes it clear he is keeping an open mind;
 - c) seeking information through appropriate channels; or
 - d) being a vehicle for the expression of opinion or speaking at the meeting as a Member (or Local Member) provided he explains his actions at the start of the meeting/item and makes it clear that, having expressed that opinion, he will make up his own mind only after having heard all the facts and listened to all the debate at Committee.

8. Applications by the Cabinet

- 8.1 A Member (or a Local Member) who is also a Member of the Cabinet and is present at a meeting of the Planning Committee at which an application made by or on behalf of the Cabinet is to be considered, may well be so committed to the particular development in his role as a Member of the Cabinet that he may not be able to demonstrate an ability to take account of counter-arguments before a final decision is reached. Also in some cases, he may be seen as an advocate on behalf of the authority.
- 8.2 In these situations, the Member may attend the Committee, and having declared his Cabinet Membership can argue for the development proposed but should leave the room after speaking and take no part in any vote. This is to ensure that he is not seen as attempting to improperly influence the meeting. However if the Member has a disclosable pecuniary interest in the application, in respect of which he has no dispensation from the County Council, he cannot speak and must leave the room whilst the Committee discusses and votes on it.

9. Receipt of Written Information

- 9.1 Any letters or emails or other written information received by Members should be given to the case officer dealing with the planning matter and he will arrange for them to be acknowledged and recorded.

10. Confidential Information

- 10.1 Members (or Local Members) should seek advice from the Director of Law and Democracy if they are in receipt of confidential information and feel they need to respond to that information.

11. Pre-Application Discussions

- 11.1 Members should not engage in pre-application discussions on planning applications except where they form part of a presentation by an applicant to the Committee. Members must maintain an impartial listening role and avoid expressing an opinion or giving advice. However, they may seek clarification of any issues, provide local information and identify any issues which may need to be addressed as part of a planning application.

* where he/his/him is stated it also includes she/hers/her.