

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**CHANGES TO THE GOOD PRACTICE GUIDE FOR MEMBERS & OFFICERS
DEALING WITH PLANNING APPLICATIONS**

1. OBJECT AND BRIEF SUMMARY OF SUBJECT

- 1.1 To consider the suggested amendments to the Good Practice Guide
- 1.2 To update members on the issue of site visits

2. BACKGROUND INFORMATION

- 2.1 On 10 September 2008 members considered a report on the changes to the procedure followed at Planning Committee meetings (minute 1078).
- 2.2 Subsequent to the approval of the changes by Council on 24 September 2008, members expressed concern that certain council officers did not routinely attend the Planning Committee. In particular, it was felt that officers from Highways should attend the committee on a regular basis. The Service Director: Legal & Democratic explained that some amendments would be required to the Good Practice Guide to facilitate this.
- 2.3 The Good Practice Guide should be reviewed on a regular basis to reflect the modern council structure. The last revision took place in March 2005.
- 2.4 When considering the changes to the procedure, members accepted that the procedure governing site visits should be placed on a more formal basis since a site visit might be a material consideration in the determination of a planning application. Members did not, however, feel that there should be a requirement to attend the site visit before voting on the determination of the application. Officers were requested to look at the issue of attendance at site visits and report back to a future meeting.
- 2.5 Since the matter was last before the committee, the courts have ruled in the case of *Hastings Borough Council* that it is not necessary for members to

attend site visits if they are already familiar with the site. A successful legal challenge may, however, be mounted if members voting on the application do not have sufficient relevant knowledge of all the issues (including familiarity with the site). Members who do not have such knowledge should take no part in the decision process.

3. OPTIONS FOR CONSIDERATION

- 3.1 Adopt the changes to the Good Practice Guide outlined in the Appendix to this report.
- 3.2 Decline to adopt the changes.
- 3.3 Note the position regarding site visits.

4. ANALYSIS OF OPTIONS

- 4.1 The proposed changes to the Good Practice Guide reflect the modern council structure and the latest advice from the Standards Board and the courts relating to declarations of interest. The changes also facilitate the attendance of officers with a wider range of expertise (see paragraph 2.4 of the revised Guide).

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Financial - Adoption of the changes should reduce the risk of costs being incurred as a result of appeals or judicial review.
- 5.2 There are no staffing, property or IT implications associated with this report.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17-CRIME & DISORDER, RISK)

- 6.1 Statutory - Changes to the constitution must be approved by the Council in accordance with the Local Government Act 2000.
- 6.2 Environmental - Environmental considerations are of major importance when considering planning applications. The changes to procedure should ensure that all applications are dealt with strictly on their planning merits.
- 6.3 Risk - Adoption of the changes in procedure should reduce the risk of judicial review.

7. OUTCOMES OF CONSULTATION

N/A

8. **RECOMMENDATIONS**

- 8.1 That the changes to procedure outlined in the Appendix are submitted to Council for approval.
- 8.2 That the position regarding site visits be noted.

SERVICE DIRECTOR: LEGAL AND DEMOCRATIC

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Background Papers used in the preparation of this report

The Good Practice Guide for members and officers dealing with planning and other applications.



GOOD PRACTICE GUIDE

**FOR MEMBERS AND OFFICERS
DEALING WITH PLANNING
APPLICATIONS AND RELATED
MATTERS**

REVISED FEBRUARY 2009

North Lincolnshire Council

GOOD PRACTICE GUIDE FOR MEMBERS AND OFFICERS DEALING WITH PLANNING APPLICATIONS AND RELATED MATTERS

1. Good Practice Guide

- 1.1 This Good Practice Guide was produced after taking into account current advice and examples of good practice. In particular it incorporates the resolutions made by the Development and Environment Committee in January 1998 in the light of the Report on Standards of Conduct in Local Government (“The Nolan Report”) and the Royal Town Planning Institute Report on the Role of Elected Members in Plan-making and Development Control. It will be reviewed from time to time to ensure it remains up-to-date but may be varied only by formal resolution of the Council. **This latest revision has been prepared to reflect the changes in the procedure followed by the Council’s Planning Committee.**
- 1.2 This Guide is intended to supplement the national **Codes of Conduct for Members and Officers**. The provisions of this guide continue to have full force and effect in relation to **members and officers** dealing with planning applications.
- 1.3 In this Good Practice Guide, unless otherwise stated, the word “committee” means the Planning Committee or any other committee of the Council that has responsibility for the determination of planning applications. “Planning application” means any application for permission, consent or approval under the provisions of the Town and Country Planning Acts and related legislation.

2. Training

- 2.1 Training on planning procedures and issues, particularly important new or changed policies and procedures, will be provided each year and will include events presented by officers with the help of experts from outside the Council where appropriate. In accordance with the recommendation of the Nolan Committee, all members of the Planning Committee must attend and members who have not undergone training will not be eligible to sit on the committee as a substitute.
- 2.2 An induction course for new members of the committee will be prepared for presentation by Council officers.
- 2.3 Planning officers responsible for the preparation of written reports and for advising members at committee meetings will be qualified to an appropriate level in Town Planning and Planning Institute (RTPI), they will be required to undertake continuing professional development to a level required of its members by the Royal Town Planning Institute (RTPI) whether or not they are members.

2.4 **Other officers of the Council may attend the committee to give appropriate advice from time to time. Such officers may possess qualifications in some or all of the following disciplines: archaeology, conservation, environmental health, highways, and law (this list is not exhaustive).**

3. Publicity for Planning Applications

3.1 The Council's policy for publicising planning applications will govern this aspect of the process and as a minimum will satisfy statutory requirements and comply with current government advice. Its intention will be to ensure that planning applications are publicised in accordance with their likely impact.

3.2 Planning officers have discretion to provide more, but not less publicity than specified by the policy where they judge that the nature of the application requires them to do so.

4. Declarations of Interest by Members of the Planning Committee

4.1 Members must comply with the duties and obligations contained in Part III of the Local Government Act 2000, the Council's Code of Conduct and the Procedure Rules contained in its Constitution. In particular, members are reminded of the statutory requirement to inform the Monitoring Officer of any changes of registerable interests within 28 days of the change and officers are reminded of the provisions of Procedure Rule 29..

4.2 Members declaring a personal interest must do so at the beginning of the first meeting of the committee at which the relevant application is being considered and at all subsequent meetings. In addition, notification of intention to declare should, if possible, be given to the chairman of the committee and the Democratic Services representative attending the meeting prior to the meeting. If in doubt as to whether to declare an interest, members should seek guidance from the Monitoring Officer.

4.3 Any member having business or other interests that are likely to bring him/her into frequent contact with the planning system should not serve on the Planning Committee.

4.4 Town and Parish Councils are consulted on every planning application in their area. Members of the committee who are also members of a parish council **may** need to declare their membership of the parish council as a personal interest **if the parish council has commented on the application** but, generally speaking, this will not constitute a prejudicial interest unless the application is submitted by their own parish council. Members should, however, approach decision-making with an open mind, prepared to listen to all sides of the argument. "Dual hatted " members are advised not to comment on an application at parish level. If they do so, they will need to make it very clear that this represents a preliminary view and that they will consider the matter afresh when the application is considered by North Lincolnshire Council. and when they are in possession of all relevant facts. Failure to do this may lead to a legal challenge on the grounds of bias or pre-determination.

4.5 **If a member of the Planning Committee has previously expressed a view on matters that arise for determination they are not necessarily debarred from voting on the relevant application. They should, however, approach decision making with an open mind, whatever their pre-existing views. If there are additional or unusual circumstances which suggest that a member may have closed their mind before embarking upon a decision, so that a reasonably minded observer would conclude that there is a real possibility of bias or predetermination, they should not vote on the application.**

4.6 **Officers of the Council dealing with or involved in planning matters should not take part in the determination of any application in which they have an interest.**

5. Lobbying of Members

5.1 This section deals with the balance between legitimate constituency concerns of members and the requirements for the Council to reach an objective decision in full knowledge of all relevant information. It is based on the premise that members should not reach a conclusion about a planning application in advance of all the relevant information being available. Where the decision will be taken by the committee, this means in advance of the committee meeting. In particular members and officers should avoid making public declarations about a planning application in a manner that may compromise the committee's decision. When a member cannot avoid doing so, he or she should not vote at the committee meeting. Any contacts which influence (or may be seen by others to influence) the opinion of members or officers should be declared.

5.2 When a member is approached by an individual or group attempting to enlist support either for or against a planning application then the member should:

- listen to and note the facts offered and opinions expressed;
- encourage the lobbyists to submit views in writing to the case officer in the **Highways and Planning Service**
- explain that the decision will be taken **either by an officer under delegated powers** or by a relevant committee which will take account of all views expressed and that the lobbyist may attend and, in certain circumstances, speak;
- avoid giving, or appearing to give, any commitment about the outcome;
- make it clear that any views expressed are personal and not necessarily the views of the Council or committee;
- pass on the information to the case officer in the **Highways and Planning Service**.

- agree to see parties representing the opposite side of the argument if asked to do so.
- declare any significant contact with either applicants or third parties at the committee meeting before a vote is taken.

5.3 Members should not meet with applicants or their agents or third parties to discuss prospective or current planning applications unless the purpose of the meeting is to obtain or clarify information about the nature of the proposed development which cannot reasonably be obtained from the submitted information. When a formal meeting is considered necessary, arrangements should be made for an appropriate officer to attend to advise and keep a record of the meeting.

5.4 Members should avoid being committed to a particular course of action because of membership of an organisation that plays a role in the planning process. In particular, members should avoid taking an active part in the discussion of planning applications by such organisations and should not vote. Members who are also members of parish councils should take note of the guidance contained in 4.4 above. This is not intended to discourage members from attending parish council meetings as ward councillors and listening to or reporting on the debates. Nor is it intended to prevent members attending meetings to provide information.

6. Contact with the Media

6.1 Media comment is usually co-ordinated by the Council's Public Relations Unit. Whether advising the Unit or responding directly, if asked to comment on a planning application before its determination, members and officers should adopt the general approach outlined in this Guide and avoid saying anything which commits, or appears to commit, the Council, or any group, to a particular course of action.

6.2 If commenting to the media after a decision is taken, members and officers should avoid saying anything that is likely to compromise the Council's ability to defend that decision successfully.

7. Meetings involving Planning Officers

7.1 Officers will inevitably meet applicants and third parties as part of their normal duties. They will:

7.1.1 record any significant contacts on the relevant application file along with the outcome, if any;

7.1.2 report orally to the committee any significant contacts made subsequent to the report being prepared;

7.1.3 be prepared to offer their professional opinion, but in so doing will avoid giving, or appearing to give, a commitment as to the likely outcome and

will make it clear that any views expressed are their own and not necessarily those of the Council;

7.1.4 not disclose the content of the officer's report until after publication with the agenda for the relevant committee meeting.

8. Reporting Planning Applications

8.1 The planning officer will prepare a written report about each application that is to be considered by the committee. This will include reference to relevant policies contained in the development plan and to other material planning considerations. Consultation responses and representations made both for and against the application will be reported in a summarised form. Any representations made after the written report has been published and which raise fresh material considerations will be reported orally and recorded in the minutes of the meeting. The officer's report will include a clear and justified recommendation.

8.2 If necessary, officers from other disciplines will attend the committee meeting to give appropriate advice.

9. Site Visits

9.1 As far as possible officers will provide information that enables the committee to reach a decision at the meeting. Site visits by the committee have a place in the planning process. They are intended to be a means of providing members of the committee with an opportunity to inspect the application site and its surroundings in order to gather information which enables them to gain a better understanding of the proposal. Site visits are expensive and time-consuming and delay the determination of the application. They should be viewed as an exception to the usual process which can be justified only by the importance or complexity of the application.

9.2 Site visits will be arranged only by resolution of the committee. Any member proposing a site visit should identify the benefit that will accrue from such a visit. The reasons for holding a site visit will be recorded in the minutes of the meeting.

9.3 The procedure governing the conduct of site visits is set out in the Council's Constitution.

10. Pre-meeting Briefings

10.1 Before each committee meeting the officers who will attend the meetings will hold a briefing with the Chairman and Vice Chairman. If requested, arrangements will be made for a similar briefing to be held with a representative of any minority political grouping represented on the committee.

10.2 The purpose of such briefings will be:

- 10.2.1 to bring those members present up-to-date with any information received since the officer's report was printed;
- 10.2.2 to ensure that the rationale behind the recommendations are understood;
- 10.2.3 to allow members to identify issues of particular concern and where additional information or explanation is necessary;
- 10.2.4 to identify any special procedural or other practical arrangements that may need to be made.

11. Group Meetings

- 11.1 There is nothing in law or in the Code of Conduct to prohibit political group meetings being held prior to committee meetings, the consideration of planning applications should not, however, be discussed at such meetings. Decisions should not be made until the actual committee meeting, when all material information is to hand. Any group meeting that is held must not be used to decide how members will vote. The use of political whips to influence the outcome of a planning application or voting on party lines could amount to maladministration.

12. Delegation of Decision-making to Officers

- 12.1 Planning applications are delegated to officers except in those circumstances specified in the Council's Scheme of Delegation, which will be reviewed from time to time.

13. Officer Recommendations and Appeals

- 13.1. The primary role of officers, when planning applications are to be determined by members, is to present the committee with all the relevant information and to recommend the appropriate course of action. The committee is not obliged to accept the officer's recommendation, but it is important that the implications of not doing so are discussed. Where the committee comes to a different decision from that recommended officers will assist with the formulation of that decision as far as it is possible to do so without prejudice to their professional integrity.
- 13.2 The Planning Officer will, at the request of the Chairman and before the vote is taken, explain the reasons for the recommendation and, as far as possible, the likely implications of the committee taking a different decision.
- 13.3 If the committee rejects the officer's recommendation, reasons for doing so will be specified and those reasons recorded in the minutes of the meeting. In particular, if the decision is contrary to the provisions of the Local Development **Framework**, members must specify which provisions of the Development **Framework** apply and the material planning considerations that outweigh the Development **Framework**. Where the decision is to refuse planning permission, planning reasons for that decision will be specified at the

meeting and agreed by the committee with the assistance of the Officers present and included in the decision notice. Where the decision is to grant planning permission, the committee should consider whether conditions and legal agreements are necessary and any such should be specified at the meeting and included in the decision.

- 13.4 Where a decision taken contrary to the officer's recommendation results in an appeal, particularly one to be heard at a public inquiry or hearing, it will be necessary for members and officers to work together to determine the best way of supporting the committee's decision. In certain circumstances it may be determined that evidence is best presented by expert witnesses from outside the Council and/or by members. Planning officers representing the Council in these circumstances will do so to the best of their ability without prejudice to their professional integrity.
- 13.5 Once the committee's decision has been taken, officers and members should not express views that may compromise the outcome of any appeal.
- 13.6 **Copies of appeal decisions will be sent to the Group offices as soon as practical after they have been received.**

14. Public Speaking at Committee Meetings

- 14.1 Applicants and third parties, or their representatives, are permitted to address the committee in accordance with Procedure Rule 35(f).

15. Applications concerning Members, Senior Officers or their spouses/partners

- 15.1 Where a planning application is submitted by any of the following: -
- (i) A member of the Council;
 - (ii) a senior officer (which in this context means any officer at or above Unit Manager level)
 - (iii) any officer responsible to the **Service Director: Highways and Planning**
 - (iv) or the spouse or partner of any of the foregoing who resides at the same address

or relates to any land in which any of the foregoing have an interest, that application will be reported to the committee for decision.

In these circumstances it is the responsibility of both the applicant and of the member or officer concerned, provided he or she has been served with the requisite notice, to draw the Local Planning Authority's attention to the existence of such an interest at the time that the application is made

- 15.2 The officer's report will include reference to these particular circumstances.

16. Planning Applications made by the Council

- 16.1 Where the committee is considering such planning applications it shall base its decision on planning policy and other material planning considerations only and shall disregard all other considerations, however worthy. Decisions relating to the Council in its role of landowner are the responsibility of the relevant cabinet member(s).

REFERENCES

Report to Development and Environment Committee on 27 January 1998 on the Third Report of the Committee on Standards in Public Life (The Nolan Report) and The Role of Elected Members in Planning and Development Control (RTPI)

North Lincolnshire Council Publicity for Planning Applications

North Lincolnshire Council Constitution.