



GOOD PRACTICE GUIDE

**FOR ALL MEMBERS AND OFFICERS
INVOLVED WITH PLANNING
APPLICATIONS AND RELATED
MATTERS**

REVISED 2014

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 Planning 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 legislation notably the Localism Act 2011 and the Council’s Constitution.
- 1.2 This Guide is intended to supplement the Council’s **Codes of Conduct for Members and Officers**. The provisions of this Guide continue to have full force and effect in relation to all **members and officers** involved with planning matters.
- 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 Background

- 2.1 In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today's place-shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.
- 2.2 This Guide is intended to reinforce councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges.
- 2.3 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.
- 2.4 Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.
- 2.5 One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial

value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved.

- 2.6 Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.
- 2.7 The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

3. The general role and conduct of councillors and officers

- 3.1 Councillors and officers have different but complementary roles. Councillors and officers are responsible to both the public and the electorate, whilst officers are responsible to the Council as a whole. Officers advise councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions. Any Committee member who wishes to attend the Planning Chairman's briefing, may do so upon request being made and approval given by the Chairman.
- 3.2 Officers act as part of a management structure and therefore councillors should only discuss a planning matter, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a councillor level.
- 3.3 Both councillors and officers are guided by codes of conduct. Members are covered by the Code of Conduct which was adopted on 1 July 2012. Officers are bound by the Code of Conduct for Employees adopted in 2005 which is incorporated in their terms and conditions of employment.
- 3.4 Staff who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute.
- 3.5 In addition to these codes, the Council's Constitution sets down rules which govern the conduct of council business.
- 3.6 Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. The requirements for members are set out in the Code of Conduct and those for officers in the Code of Practice for Gifts and Hospitality. Copies of, and advice on, these codes can be obtained from Democratic Services.
- 3.7 Officers and councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

3.8 Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Ombudsman on grounds of maladministration or a breach of the authority's code.

4. Training

4.1 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.

4.2 An induction course for new members of the committee will be prepared for presentation by Council officers.

4.3 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. 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 actual RTPI members.

4.4 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).

5. Registration and disclosure of interests

5.1 Chapter 7 of the Localism Act 2011 places requirements on councillors regarding the registration and disclosure of their pecuniary and other interests and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

5.2 It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at planning committee he or she should raise this with the monitoring officer as soon as possible.

5.3 Councillors are referred in particular to the Council's Code of Conduct to be found at Part E of the Council's Constitution which sets out the interests that councillors need to register and declare

5.4 Appendix 1 illustrates how interests should be dealt with.

6. Predisposition, predetermination, or bias

6.1 Members of the committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

6.2 The courts have sought to distinguish between situations that 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.

6.3 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor 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 acceptable, the former is not and may result in a Court quashing such planning decisions.

6.4 Section 25 of the Localism Act 2011 also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

6.5 This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased.

6.6 For example, a councillor who states

"Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms, ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."

6.7 If a councillor has predetermined their position, they should withdraw from being a member of the committee. This would apply to any member of the planning committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward). The member concerned may wish to consider being substituted for the relevant meeting.

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

7.1 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 **Assistant Director: Planning and Regeneration.**
- (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.

7.2 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

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

8. Planning Applications made by the Council

8.1 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).

8.2 Proposals for the Council's own development should be treated with the same transparency and impartiality as those of private developers.

9. Lobbying of and by councillors

9.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

9.2 As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

9.3 Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

9.4 As noted earlier in this Guide, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and

arguments. In such situations, they could restrict themselves to giving advice about the process and what can and can't be taken into account.

- 9.5 Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they 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 committee.
- 9.7 Any councillor, not being a member of the committee, who attends the committee meeting and speaks on behalf of a lobby group should consider withdrawing once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence.
- 9.8 It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.
- 9.9. Planning committee members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors

10. Group Meetings

- 10.1 There is nothing either 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.
- 10.2 Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.

11. Pre-application discussions

- 11.1 Pre-application discussions between a potential applicant and the council can benefit both parties and are to be encouraged. 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.
- 11.2 In the past concerns have been raised about probity issues with regard to the involvement of councillors in pre-application discussions in that councillors may be accused of predetermination when the subsequent application came in for consideration. Now, through the Localism Act 2011 and previously the Audit Commission, it is recognised that councillors have an important role to play in pre-

application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and helps to make sure that issues don't come to light for the first time at committee.

11.3 The Localism Act 2011, and in particular Section 25, by endorsing this approach, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within the following guidelines. (NB Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken).

- Clarity at the outset that the discussions will not bind the council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice will be given by officers based upon the development plan and material planning considerations.
- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.
- Confirmation that a written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines would apply. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. However thought should be given as to when discussions should be registered and notes written.

11.4 Similar arrangements can also be used when authorities are looking at new policy documents and particularly when making new site allocations in emerging

development plans and wish to engage with different parties, including councillors, at an early stage in the process.

- 11.5 The Statement of Community Involvement sets out the council's approach to involving communities and other consultees in pre-application discussions.

12. Meetings involving Planning Officers

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

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

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

12.1.3 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;

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

13. Officer reports to committee

- 13.1 As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.
- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

- 13.2 Any oral updates or changes to the report should be recorded.
- 13.3 Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

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 D.1. 35(i).

15. Decisions which differ from a recommendation

- 15.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).
- 15.2 This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.
- 15.3 The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.
- 15.4 Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.
- 15.5 The committee should consider taking the following steps before making a decision which differs from the officer recommendation:
- discussing the areas of difference and the reasons for that with planning officers beforehand (as part of a standard 'call-over' meeting where all items on the agenda are discussed).
 - recording the detailed reasons as part of the mover's motion.
 - adjourning for a few minutes for those reasons to be discussed and then agreed by the committee.
 - where there is concern about the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.
- 15.6 If the planning committee makes a decision contrary to the recommendation of the officers (whether for approval or refusal or changes to conditions or S106

obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.

- 15.7 The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the Council, should one be made.
- 15.8 All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.
- 15.9 The application may then have to be referred to the relevant Secretary of State, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the report of the officer recommends approval of such a departure, the justification for this should be included, in full, in that report.
- 15.10 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 all Council members and officers to work together to determine the best way of supporting the committee's decision in an unified manner and in the best interests of the Council. 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.
- 15.11 Once the committee's decision has been taken all Council officers and members should not express views that may compromise the outcome of any appeal.
- 15.12 Copies of appeal decisions will be sent to the Group offices as soon as practical after they have been received.

16. Site Visits

- 16.1 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.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers.

- the comments of the applicant and objectors cannot be expressed adequately in writing or
 - the proposal is particularly contentious.
- 16.2 With the exception of Major planning applications, 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.
- 16.3 The procedure governing the conduct of site visits is set out in the Council's Constitution. However, in future the Head of Development Management and the Chairman can consider whether or not a site visit is necessary for each individual major application and it can be foregone should it be perceived that no benefit will be gained from attending.
- 16.4 Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters.
- 16.5 This should be made clear to any members of the public who are there. Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.
- 16.6 Only members who take part in the site visit or who have sufficient relevant knowledge and familiarity with the site can take part in the decision making process.

17. Contact with the Media

- 17.1 Media comment is usually co-ordinated by the Council's Communications Team. Whether advising the Team 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.
- 17.2 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.

18. Pre-meeting Briefings

- 18.1 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.

18.2 The purpose of such briefings will be:

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

19. Delegation of Decision-making to Officers

19.1 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.

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.

Probity and planning for councillors and officers. The LGA and PAS.

North Lincolnshire Council :Code of Conduct (members).

North Lincolnshire Council : Code of Conduct (officers).

North Lincolnshire Council : Code for Gifts and Hospitality.

Statement of Community Involvement.