

# TENDRING DISTRICT COUNCIL



## **Planning Matters: Local Protocol For Councillors**

(THIRD EDITION)

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### The Protocol

1. Planning applications and the way they are decided through the development management process can attract a great deal of public and media interest. It is therefore important that the whole system is fair and is seen to be open and free from improper influence.
2. The Council has a Members' Code of Conduct which was adopted on 26 June 2007. This Protocol is additional to that Code and applies to all Members, containing important advice about how to deal with planning issues. Whilst the guidance contained in the Protocol is purely advisory, if a Councillor acts in breach of it, this may put the Council at risk of legal proceedings, a complaint alleging maladministration or an application for a costs award against the Council at the conclusion of a planning appeal. It could also result in a complaint to the Council's Standards Committee.
3. The Protocol describes how the Council deals with planning applications and other related planning matters including those relating to planning policy and recognises the separate roles of Councillors and Officers.
4. The Protocol has been updated to take into account a number of changes to the way planning applications are dealt with as a result of the Planning Services Improvement Plan but principally because of the introduction of Development Management. The Council is committed to providing a Development Management service for local communities; inward investors; developers; other statutory bodies and infrastructure providers in order to promote high quality, sustainable development. A Development Management approach, however, will necessitate a change in the way that both officers and elected Members work within the planning applications system. Development Management, for example, encourages Councillors to be involved in pre application discussions to act as champions of their communities but without prejudicing their role as decision makers. The Protocol provides updated advice on this and other issues.

## **Section 1 - The role of Councillors**

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- 1.1 In making decisions on applications, Councillors must:-
- act fairly and openly and be willing to listen to all sides of the argument;
  - approach each application with an open mind and in the wider public interest rather than pre-determination;
  - carefully weigh up all the material planning considerations;
  - avoid undue contact with interested parties;
  - not lobby or pressurise other Councillors and/or Officers; and
  - keep all information confidential which has that status.
- 1.2 The planning system exists to consider development policies and proposals in the light of the wider public interest. Councillors must take into account the interests of the whole District, not just their own wards and act in a way which is fair and is clearly seen to be so.
- 1.3 Councillors must not involve themselves in formal decision-making on a matter where they have a prejudicial interest and/or there is an appearance of bias. The definition of “prejudicial interest” is set out in the Members’ Code of Conduct. Bias arises when a fair-minded and informed observer would conclude that there was a real danger that the Councillor approached the decision with a closed mind and/or without the fair consideration of all relevant planning issues.
- 1.4 Councillors must not instruct or pressurise Officers to make a particular recommendation on any application.
- 1.5 Councillors can expect Officers to give them every reasonable help in answering questions on planning matters.
- 1.6 Councillors must be free to vote in the way they consider appropriate, that is, without a Party “whip”.
- 1.7 Councillors must take account of all the relevant planning information, evidence and arguments including the Officers’ recommendations. These will include the “development plan” and all relevant material planning considerations.
- 1.8 Councillors are encouraged to take part in discussions on development proposals at all relevant stages where at least two of the Council’s Planning Officers are present, including when options are being scoped and plans

shaped, without prejudicing their decisions or compromising the integrity of the process.

## **Section 2 - Discussions with applicants**

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- 2.1 At present the Council encourages Officers to have meetings with prospective applicants before they make a planning or other types of application. This helps to address any potential issues or problems at an early stage and assists in the efficient handling of the formal application for planning permission. These meetings have normally only involved Officers (not Councillors).
- 2.2 In the past the traditional 'development control' approach to managing development proposals has focussed on processing applications and enforcing contraventions. Development Management aims to actively promote sustainable development and provide a place shaping role. In order to do this it will be essential to alter the way in which both officers and elected Members work within the planning applications system. It will change the way the Council works with developers, the community, other statutory bodies and infrastructure providers to make planning consideration a tool for achieving better outcomes rather than a simple test of adequacy. In order to do so, Members are to be involved in pre application discussions to act as champions of their communities but without prejudicing their role as decision makers. An advice note has been produced to assist this process and is contained at Appendix 1 to this Protocol.
- 2.3 Councillors will not normally take part in post-submission meetings unless the matter has been reported to the Planning Committee and the Councillors concerned have been appointed by the Committee.

## **Section 3 - Role of Informal Briefings**

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- 3.1 To assist in the decision-making process, Councillors may request Officers to discuss underlying issues/policies relating to major development proposals. These discussions must not extend to detailed discussion on the merits of any particular proposal.

## **Section 4 - Lobbying**

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- 4.1 It is common for applicants and others to want to discuss a proposed development before and/or after an application is submitted. This can help the Council to gain a better understanding of the issues involved. However, to avoid compromising their position before they have received all the relevant information, any Councillors who are likely to sit as members of the Planning Committee (or as substitute) when it determines the application should:-

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- not make it known in advance whether they support or oppose a proposal;
  - not risk the appearance of bias by expressing support for, or opposition to, a proposal;
  - not organise support or opposition for a proposal or (except when speaking before the Planning Committee) lobby other Councillors;
  - limit their reply to explaining the procedure;
  - direct lobbyists or objectors to the case Officer; and
  - tell the Head of Planning or the Chairman of the Planning Committee about the existence of any lobbying interests.
- 4.2 Councillors who do not sit as members of the Planning Committee (or as substitutes) when it determines the application are free to express their views provided that their actions do not undermine and are not perceived to undermine the fairness of the Planning Committee when making its decision. However, Councillors with a prejudicial interest in an application can only attend the Planning Committee for the purpose of public speaking (where they have that right) and must leave the meeting immediately after they have spoken and may not then sit in the public gallery until after the Planning Committee has determined the application.
- 4.3 It is not improper or unlawful for members of the Planning Committee and substitutes to be predisposed about a particular application provided that they are not predetermined and it is clear to all concerned that they are still prepared to listen to all sides of the argument and to act fairly in relation to the determination of the application.
- 4.4 It is well established that the use of whipped votes at group meetings, or reliance on party political loyalty, to compel or pressurise a Councillor to vote on a planning application in a particular way is grossly improper and will amount to maladministration.
- 4.5 Moreover, the Court of Appeal has endorsed the principle that the use of whipping in relation to the determination of a planning application may be grounds for seeking a judicial review. Votes in Committee and Council on planning applications are a matter of individual conscience based on planning judgement and should not under any circumstances be influenced or controlled by whipped votes.
- 4.6 Any member of the Planning Committee who publicly expresses a final view on an application before the Committee meeting at which a decision is to be taken, should consider themselves biased, and may not sit on the Planning Committee or vote on that particular application. They may speak under the public speaking scheme, if that scheme so permits, and must then withdraw from the meeting.

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- 4.7 A non-Planning Committee Councillor who had previously expressed support for a particular body of opinion, who is subsequently substituted onto the Planning Committee, will equally not be able to take part in the proceedings on that application. They may participate in public speaking where that scheme so permits, provided they then withdraw from the meeting.
- 4.8 Any substitute must exercise their own independent judgement on all matters to be decided. No Councillor may instruct a substitute to vote in any particular way or to lobby, coerce or canvass the substitute about any particular planning issue.
- 4.9 Planning Committee members and substitutes who consider an application at a town or parish council meeting may have a provisional view and are entitled to be predisposed provided that it is clear to all concerned that they are still prepared to listen to all sides of the argument and act fairly in relation to the consideration of the application.

### **Section 5 – Participating in policy development**

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- 5.1 Members will follow the guidelines set out in the Council's Statement of Community Involvement in playing their part and advising others in the development of planning policies.

### **Section 6 – Making Representations at a Planning Inquiry or Hearing**

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- 6.1 Councillors may attend a Planning Inquiry or hearing before a Planning Inspector(s) in relation to a planning application or policy matters. Councillors who wish to make personal representations (whether oral or in writing) to the hearing or inquiry must make it clear to the Inspector(s) and the public that they are not expressing those views in their capacity as a Councillor. No Councillor may use or seek to use their position as a Councillor unfairly for personal gain or otherwise.

### **Section 7 - Reports to the Development Control Committee**

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- 7.1 The terms of reference of the Planning Committee are set out in the Council's Constitution including the types of applications which will be reported to the Committee rather than delegated to the Officers.
- 7.2 Committee reports will normally be available at least five clear working days before the meeting.

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- 7.3 All applications referred to the Planning Committee for decision will have a full written report from Officers, which will include:
- Application details (reference number; applicant's name, etc);
  - an executive summary of the Officers' recommendations (to include a summary of each of the conditions where an application is recommended for approval and the reason(s) for refusal where the recommendation is one of refusal);
  - the nature of the proposals;
  - a clear explanation of relevant policies in the Development Plan, the site and its location and relevant planning history;
  - a reasoned appraisal of the planning policies relating to the proposal and any other material planning considerations;
  - the views of statutory and other consultees;
  - a response to any substantial objection(s) from the public; and
  - a clear recommendation.
- 7.4 Any relevant planning information which is received after the written Officer report has been finalised but prior to 1pm on the day of the Planning Committee meeting will be presented by Officers as an addendum to their report. In the event of significant changes occurring after the finalisation of the Officer report, the Assistant Chief Executive will defer consideration of the relevant application.
- 7.5 Where the Planning Committee makes a decision on a planning application contrary to the Officer recommendation, or on a draft planning policy or land allocation which departs from the Officer recommendation, this can be difficult to justify if challenged. It is therefore important that there is a clear written audit trail recording the reasons for and source of all such departures. Where a planning application is determined contrary to the Officer recommendation, Members will provide officers with reasons based on proper planning grounds and these will either be recorded in the Minutes or a recording of the meeting will be taken. Officers through the Chairman need to be able to assist members in ensuring that the grounds for refusal and the reasons behind them are appropriate in relation to the policy framework and will offer suitable guidance on wording and the relevant policy where professionally possible. A guidance note for dealing with applications at meetings of the Planning Committee when Members disagree with the Officer's recommendation was approved by Planning Committee on 5 January 2010 (minute no. 137 refers) and is contained in full at Appendix 2.



## **Section 8 – Members’ Written Representations on an Application**

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- 8.1 Members may submit written representations on a planning matter to the Planning Committee or a Planning Inspector, or pass on comments they have received from constituents, which may include letters and/or petitions.
- 8.2 To be considered material to the determination of an application, these written representations must have some genuine planning relevance to the application. The weight to be given to any such representation will depend on the extent of this planning relevance, not on the number or length of representations made, nor on the number of signatures. Members should therefore try and keep their written representations as short and simple as reasonably possible. Suitable guidance from an Officer (other than the case officer) will be provided, where professionally possible.
- 8.3 Where Members’ comments are at odds with the Officers’ recommendation on a particular planning application, Part 3 Delegated Powers of the Constitution sets out the arrangements for dealing with the application concerned. (See Planning Committee Delegation to Officers section - Part 3.82-3.86)

## **Section 9 - Committee Site Visits**

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- 9.1 All application sites are visited by Officers as part of the application process whether these are Planning Committee items or delegated applications.
- 9.2 In the future all Members of the Planning Committee will be invited and expected to attend a site visit for all those applications being considered at the formal meeting of the Planning Committee. Local Ward Members and a representative of the local Town or Parish Council will also be invited to join the Members of the Planning Committee at the relevant site visit. **[NOTE: The power to adopt this revision is delegated to the Head of Planning Services (minute 11(c) 14.3.11 refers)]**
- 9.3 No Councillor with a prejudicial interest in the application concerned may attend the site visit to which it relates.
- 9.4 Councillors attending formal site visits by the Planning Committee will be accompanied by an appropriate Officer(s) of the Council.
- 9.5 The purpose of the site visit is fact finding only.
- 9.6 The Chairman will open the formal site visit and invite Officers to point out relevant features of the site and its surroundings. The Chairman will then invite the applicant, local Ward Members present, Town or Parish Councillors

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and local residents present (one at a time) to point out any relevant features of the site and its surroundings, ask related questions and raise any site-related issues that they wish to draw to the attention of Councillors. Councillors will be able to see the physical features of the site and ask questions of any speaker. There must be no discussion of the merits of the case, and all questions from Councillors and other speakers must be put through the Chairman.

- 9.7 When Councillors on the Planning Committee are on site visits they must not make any comments that could give the impression that they have already made their minds up about whether the application should be approved or refused. No decision on the application will be made until a formal meeting of the Planning Committee, where Councillors will have before them all necessary information to be able to make a properly informed decision.
- 9.8 The visiting Planning Committee party will stay together as a group. No lobbying by applicants or objectors will be allowed. If an applicant or group persists in attempting to lobby, all Councillors and Officers will leave the site.
- 9.9 Once all questions are completed and Councillors have completed their inspection of the site the Chairman will formally close the site visit. All Councillors should then leave the site.
- 9.10 Councillors may undertake site visits independently, but when doing so they should not discuss the merits of the application with any other party.

### **Section 10 – Enforcement**

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- 10.1 The Council may receive information and/or complaints about breaches of planning from one or more informants whose identity and personal details are confidential. Where Councillors are provided with any of this information on a strictly personal “need to know basis”, it must not be divulged to any other person.

### **Section 11 - Disclosure of interests**

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- 11.1 Rules and guidance for Councillors on declaring their interests are set out in the Code of Conduct. Councillors must follow these rules and guidance and also review their own situation regularly.
- 11.2 Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer (or the Deputy Monitoring Officer at the Planning Committee).
- 11.3 A Councillor with an interest in a planning application must make a written declaration of it on the appropriate form to the Monitoring Officer as soon as they are aware of it. Completed forms will be kept on the Members’ Register

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of Interests, which is available for public inspection.

- 11.4 Councillors should avoid receiving hospitality from anyone with an interest in a planning proposal. Where this is unavoidable Councillors should ensure that they declare its receipt, as soon as possible, by completing the appropriate Register of Members' Interests form and sending it to the Monitoring Officer.

### **Section 12 – District Council applications**

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- 12.1 Where the Council as landowner wishes to carry out development requiring planning permission, a formal planning application must be submitted to the Council as the Local Planning Authority and will be treated in the same way as those submitted by private applicants.
- 12.2 All such applications must be decided by the Planning Committee whether they are made by the Council or someone acting as applicant on its behalf.

### **Section 13 - Applications submitted by Councillors**

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- 13.1 Applications which are submitted by or on behalf of Councillors, will be reported to the Planning Committee for a decision where the recommendation is one of approval and the Head of Planning Services (or equivalent authorised officer) considers that the application should be considered by the Committee in the interests of openness and transparency. Councillors should make a written declaration of interest in the planning application to the Monitoring Officer in accordance with the provisions of Section 11 above.
- 13.2 The Councillor concerned can still participate in public speaking if they are eligible to do so, provided that they leave the Planning Committee meeting immediately after they have done so.

### **Section 14 - Training**

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- 14.1 Members that have been nominated by their Group leaders can act as a designated substitute member of the Planning Committee. Any member of a political group is eligible to be a designated substitute Member providing that they have received training in relation to development management matters under a continuing programme arranged by the Council.
- 14.2 The Council provides training for Councillors on development control, local plan making and/or other planning matters at least once a year. The Council also aims to provide more specialist training to update knowledge, cover particular topics or to look at matters in greater depth. Training events are open to all Councillors and, where places are limited, current members of Planning Committee will take priority.

## **Section 15 - Review of this Local Protocol**

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15.1 This Protocol will be reviewed periodically to ensure it remains up to date.