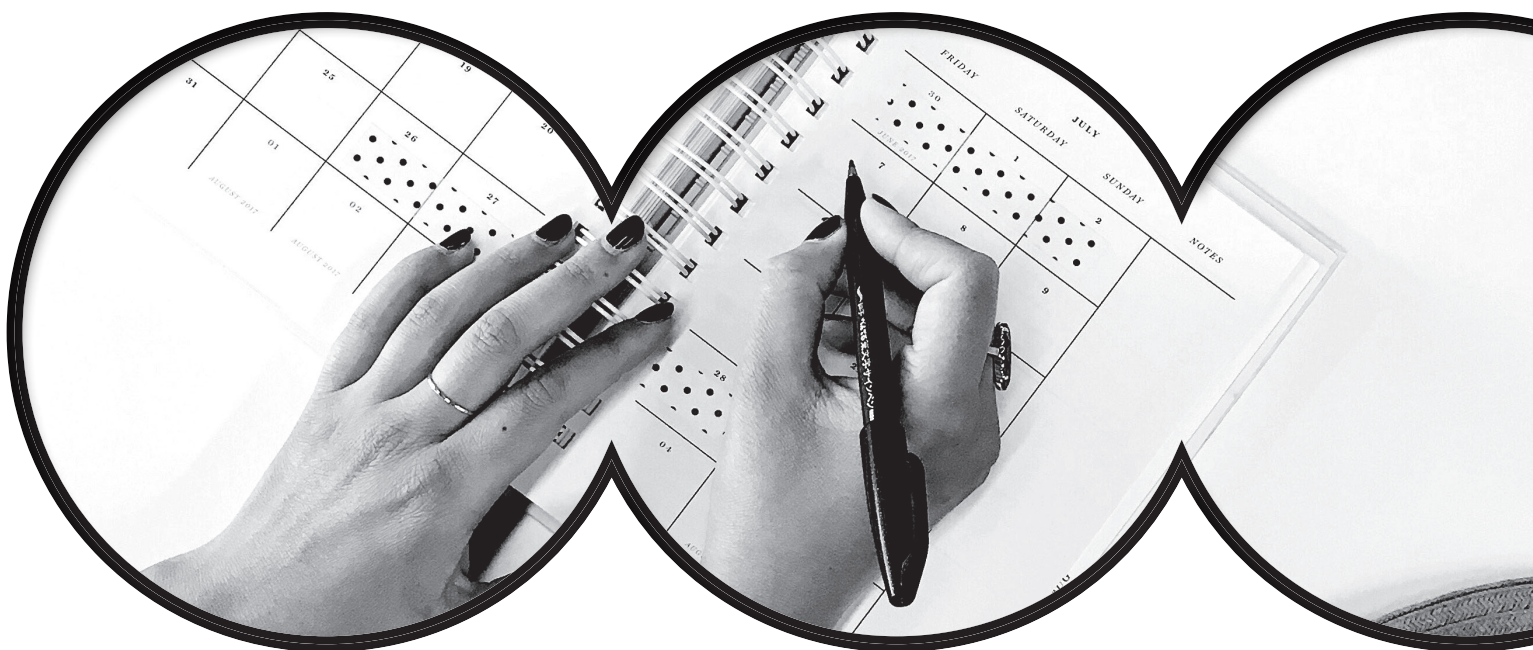


A councillor's workbook on planning



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Foreword

This workbook has been designed as a development aid for elected members regardless of their experience or responsibilities. Its content is aimed at supporting both existing and newly elected members in their role as council and community representatives. It makes no judgment about whether you have been a member for some time or you are newly elected in to the role.

This workbook will brief and update you on the key aspects of the changing role and responsibilities of ward members, in the context of the opportunities and challenges facing our communities.

Those members who are new to local government will benefit from how the workbook quickly will bring you up to speed on the main areas of the ward member role. It will help you identify how you can focus on the key skills needed to be effective in carrying out your day to day activities.

The workbook offers few firm rules for ward members as it recognised that each individual must decide how best to approach the role. This will be influenced by the ward you represent and the methods and approaches that suit you best. The workbook should serve as a direction marker rather than a road map.

In practical terms the workbook will take you two to three hours to work through. You can dip and out of the workbook working at a pace that suits you best.

To benefit fully you need to think about your own approach in influencing other people – how the material relates to work in your locality, the people you serve and the council you represent.

As you work through the book you will find a number of features designed to help you think about community leadership and the councillor's role:



Guidance – this is used to indicate research, quotations, explanations and definitions that you may find helpful.



Challenges – these are questions or queries raised in the text which ask you to reflect on your role or approach – in essence, they are designed to be thought-provokers.



Case studies – these are 'pen pictures' of approaches used by other people or organisations.



Hints and tips – these represent a selection of good practices which you may find useful.



Useful links – these are signposts to sources of further information and support, outside the workbook, which may help with principles, processes, methods and approaches

Introduction

Planning – what is it good for?

If you think about planning, what word(s) come into your mind?

To some councillors planning is exciting and visionary, it is about improving the environment, making places and communities work, a way of securing tangible improvements and investments, of shaping the future, and a mechanism for getting involved in decisions on things that matter to people. To others, it is bureaucratic, confrontational, stifles creativity, and pits neighbours against each other. Some residents fear it, don't trust it, and think it fails them. Some businesses see it as stifling innovation and enterprise.

Whatever your view of the value of planning it is a council activity that as a councillor you should take seriously. The Local Plan, planning proposals and decisions are all things that the public are interested in, although not all of the time. If you think about how many more members of the public turn up for a planning committee than a full council meeting, you can tell what sparks interest and strong views.

This workbook will help you to understand how the planning system in England works.



A brief introduction to planning

At a high level planning is about making places, developing communities, and shaping the future. It plays a critical role in identifying what development is needed and where, what areas need to be protected or enhanced, and in assessing whether proposed development is suitable.

Planning is about upholding the wider public interest for the benefit of the whole community and not just individual constituents or particular interests.

The goal is to plan for and deliver sustainable development, which means balancing the economic, environmental and social impacts of new development. Finding this balance and giving the appropriate weight to the different priorities is part of your job as a decision maker.

At a more everyday level planning is about what people and businesses want to do – or see happen – with buildings and land: house extensions and alterations, changes in the shopping area, pubs converting to housing, businesses expanding and contracting, energy proposals, and new housing.

There are three main aspects to the planning system:

- **plan-making** (preparing local plans)
- **development management** (dealing with planning applications, proactively managing development)
- **enforcement and monitoring** (monitoring how policies and developments are being implemented, including enforcement against breaches of planning).

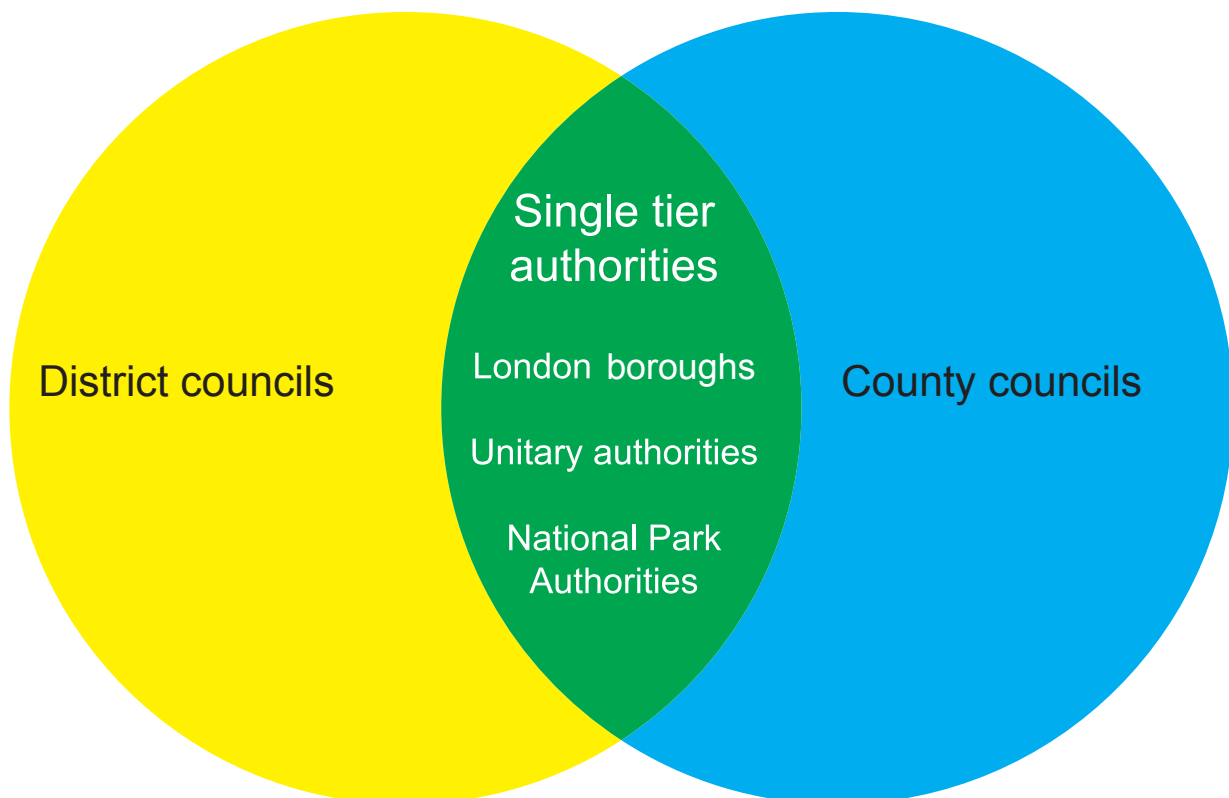
Decision-takers in planning

Local planning authorities

Local government administers much of the planning system. District councils are responsible for most planning matters, other than transport and minerals and waste planning which are typically functions of the county council. In single tier areas authorities have responsibility for both district level and county level planning matters. In London the Mayor also has powers to determine certain planning applications of potential strategic importance. In a national park, planning functions are carried out by the park authority.

The Government wants to see planning decisions taken at the lowest level possible and has introduced the ability for parish and town councils to produce neighbourhood plans which, once in force, form part of the policies used to make decisions on applications. Where there isn't a parish or town council, representatives of the local community can apply to establish a neighbourhood forum to prepare a Neighbourhood Plan.

Local planning authorities



Councillors

Councillors have a key role in planning by:

- making sure that local people are involved in planning, by acting as a liaison between communities and the council and raising local issues, and helping residents to understand what the council is doing
- by helping to set the direction of planning policy
- by being a decision maker on the planning committee; committees generally deal with around 5-10 per cent of the applications determined, usually the most strategic and complex proposals
- helping to set the vision and culture within the planning service, and working with officers.

Officers

Local authority officers support councillors and deliver the service to applicants and residents. The efficiency and effectiveness of officers is really important in how people perceive the planning service (along with councillors and the committee). Most decisions on planning applications are delegated to officers to deal with, in accordance with the terms set out in the authority's constitution.

At planning committees, officers advise, councillors decide.

Planning decisions can also be made by the **Secretary of State for Communities and Local Government** (on a small number of decisions through the appeals system, the call-in process and decisions on nationally significant infrastructure projects); and the Planning Inspectorate (PIN), a government agency responsible for deciding most appeals on behalf of the Secretary of State.

The main elements of planning

Plan making – the local plan

Councils have to have a plan for their area, which sets out how the council want the place to develop over the next 15-20 years, taking into account evidence gathered, and engaging with their communities to garner their views and input. Having a plan enables a council to think seriously about the direction of a place, gives clarity to residents and investors, acts as a delivery plan for the council and is the framework against which planning applications are assessed.

Local plans address needs and opportunities in relation to housing, the local economy, community facilities and infrastructure. They should also safeguard the environment, enable adaptation to climate change and help secure high quality accessible design.

It is important that you familiarise yourself with the **National Planning Policy Framework** (NPPF). This sets out national planning policies covering the economic, social and environmental aspects of development. These policies must be taken into account in preparing local and neighbourhood plans.

How are local plans made?

Producing the Local Plan should be a collaborative exercise, led by the local planning authority but in collaboration with local communities, developers and landowners and other interested parties.

Planning policies are developed through a process that involves setting a vision, gathering and reviewing evidence, developing and consulting on different options, and assessing the plan against a series of national and European criteria for sustainability.

The plan must be supported by a robust evidence base, which could include information on flood risk, housing need and the housing market, viability, tourism, employment, travel patterns, retail, etc. It will also involve studies of what land is available for housing (a strategic housing land availability assessment) and employment uses. Finally, the policies in the plan must be 'deliverable' in that they are likely to be translated into reality.

Developing strategies and policy to deal with locally assessed needs (for housing and employment) and assessing the sustainability of various options (a sustainability appraisal) requires close working between officers and councillors, often led by a member level working group.

Plan making can be complex (sometimes unnecessarily so) and expensive. Your input and involvement in helping to involve the community throughout the process will be important.

Sometimes there will be difficult decisions (and possible unpopular) and trade-offs to be made. For example, about whether to a housing policy which focuses on dispersal or urban concentration; whether to do a green belt review; if jobs growth are part of the strategy, where will the houses go to meet the needs for employees; how will infrastructure be funded?

One of the most important national requirements set out in the National Planning Policy Framework is that council's plan to meet the housing need in their area (and sometimes overspill from adjoining areas as well). Usually referred to as 'objectively assessed needs' (OAN). Establishing the OAN is a technical exercise taking into account population and household growth projections, migration and also market and economic conditions.

Local plans translate these into policy, including identifying land for housing and employment uses. An authority is required, again by national policy, to identify

a five year supply of specific, deliverable housing sites that should be updated annually. This can be the subject of much debate and challenge for an authority; it will often involve difficult decisions about where it is appropriate for housing to go.

Councils need to work together on meeting need across a housing market area. So if you can't identify sufficient land in your administrative area to meet your identified need, you need to have conversations with adjoining authorities about whether they can identify sites to meet your overspill; alternatively an adjoining authority might be looking at you to help meet their need.

Without a five year land supply even recently adopted planning policies for the supply of housing will be considered out of date and not relevant when it comes to determining planning applications. This has been demonstrated in appeal decisions and high court challenges.

The consequences of this are that where councils refuse planning permission for housing that is otherwise acceptable in planning terms, these decisions might be determined at appeal. This can lead to:

- an unbalanced distribution of housing or piecemeal development
- development in areas considered unsuitable by the council
- possibly, a lower level of funding for affordable housing, community facilities and infrastructure
- additional costs to be borne by the council.

When the authority is happy with the plan and satisfied that it addresses the issues for the area, the plan is submitted to the Planning Inspectorate for examination. The Inspectorate will look at the plan and assess it against four criteria. Is the plan:

- **positively prepared** – the plan should be based on a strategy that tries to meet the needs of the area (plus, under the duty to cooperate, any unmet needs from neighbouring areas, if that can be achieved) in a way that will achieve sustainable development
- **justified** – the plan should be the most appropriate strategy, when compared with reasonable alternatives
- **effective** – the plan should be deliverable over its period taking into account joint working on strategic cross-boundary strategic priorities
- **consistent with national policy** (as set out in the National Planning Policy Framework – the Framework, or NPPF).

The Inspector will also assess whether the council has met the Duty to Cooperate; namely, has the council worked cooperatively with other councils on cross boundary, strategic issues (including, and often most controversially, on how the wider area can plan for its housing need).



Case study Regeneration in Reading

Reading Borough Council

used their plan to prioritise regeneration. Community consultation showed that residents wanted to see growth and rejuvenation of the city. Reading's plan allocated a particular area in the south of the borough for regeneration. They have since granted permission for several developments in the area, including private hospitals and hotels.



Case study Growth and infrastructure development in Plymouth

Plymouth City Council's Plymouth plan adopted in 2015 is an integrated strategy for all the council's activities including planning for new areas of growth and infrastructure development. It is based on delivering four key objectives:

- to fulfil a strategic role as key economic driver for the area
- to provide good places for people to live
- to use its strengths to deliver a prosperous city, strong economy and quality spaces
- to be renowned as Britain's Ocean City.

Having completed this integrated plan, they are now embarking on part two which will be a joint strategic plan with neighbouring authorities South Hams and West Devon.

Neighbourhood plans

Parish councils and neighbourhood forums are able to produce neighbourhood development plans (NDP). These plans, if passed through a light touch examination and endorsed by their community at a referendum in the area and "made" (adopted) by the local planning authority, have statutory weight as part of the development plan.

As such, all decisions on planning applications in the area should be taken on the basis of the policies in the NDP.

Neighbourhood plans are not intended to be a mechanism for stopping development, but helping the local authority to deliver its housing need by planning for it at a more granular level. Neighbourhood plans which are seen to be too restrictive have not been passed in that form by examiners.

Authorities have a duty to advise and assist the community organisations to prepare their Neighbourhood Plans, along with a formal role in designating the neighbourhood forums and neighbourhood planning areas, undertaking statutory consultation on the draft plans and organising the plan examination and referendum.

That neighbourhood planning is explicitly intended to be community led, has led some local authority councillors to feel that they need to stand back from getting involved. But given the significance of this tier of plan making to the community, there is a clear role for councillors to take a positive role, working between the community and the local authority to facilitate a partnership approach.



Guidance

"With neighbourhood planning, our role will change in a number of ways from being a local ward councillor representing the community – to becoming the local leader and helping them to make the decisions about their neighbourhoods themselves."

Councillor David Smith, Lichfield Borough Council

What is your role in plan making?

As a minimum, you should:

- a) help officers with their community engagement during the plan preparation process
- b) help the community to get involved, understand the process and feed their views into the policy development
- c) understand the plan policies and be able to explain what the council is trying to achieve
- d) understand the plan policies as the context for making decisions on planning applications.

Your council will also have a cross party policy working group or steering group which meets regularly and works with officers on reviewing the evidence, decide what it means, and set the direction for policy development. Even if you have an adopted plan, there is still a role for councillors in monitoring the success of the policies and updating the plan.

With neighbourhood plans you have a role in being a local leader, helping local communities with understanding the choices they can make, and acting as a liaison with the council.

Overview

In overview, policy development is a conversation in which you need to match and reconcile

- evidenced needs
- preferences for the type of place that your communities want your area to become
- land available for development within timeframes
- resources available to deliver the necessary infrastructure to
- underpin new development
- viability and deliverability of development and supporting infrastructure.

Planning applications

Development management is the part of planning which deals with planning applications (including pre-application discussions). This is often where residents sit up and take notice and will get in touch with you.

Whether the application for planning permission is for an extension to a house, a change of use in the shopping area, a small infill development or for a large residential scheme as an urban extension or on a settlement boundary, the outcome is important to the applicant, to those neighbouring the development, and sometimes the wider community. And they matter to you, as it is via planning decisions that you implement the policies in your plan.

Planning decisions affect peoples' lives and the value of land. It is critical that the decision is made fairly and in accordance with policies that have been tested and found sound, and in the public interest. Finding the right balance between different objectives is an important job for all councillors involved in planning committees.

People can be suspicious of development (or growth) and have an in-built resistance to it. But development is generally a good thing, in the long term at least, even if not seen that way in the short term. It brings in money to spend in the area, jobs, infrastructure, housing, environmental improvements etc. Part of the role of the decision maker is to balance all of these things, which your policies are probably trying to secure, with any adverse impacts of the development

Some development doesn't need permission from the authority, it is known as permitted development. This is where permission has effectively already been granted nationally.

Making the decision on a planning application

When a planning application is received, it will be checked by officers to make sure that all the relevant information and fee has been submitted. The application will then be publicised (using methods such as site notices and notifying neighbours and parish councils) so that people have the chance to express their views. The specific publicity requirements will depend on the type of application.

People normally have 21 days to respond and make comments on the application. Written comments (as they relate to planning matters) will be taken into account when a decision is made.

An authority usually has up to eight weeks to make a decision on minor applications, which include most householder cases, and up to 13 weeks for major development such as large housing or business sites. This can be longer when agreed with the applicant.

Most planning applications are decided by officers under delegated authority with only the more complex, large or controversial applications coming to committee for decision. Your authority will have its own policy on delegated decision making. In most councils more than 90 per cent of applications received by the authority are straightforward and decided by officers.

Planning legislation requires that applications should be decided in line with the policies of the development plan, unless some other material planning consideration persuades you to make a decision contrary to the development plan policies

If you are on the planning committee which When approaching a planning decision you should:

- read and understand the officer's report, which will set out the description and context for the proposal, outline the relevant policies and responses received to the proposal, and will then analyse the proposal against relevant policies and material considerations before putting forward a recommendation on the application (ie to grant or refuse permission)
- seek clarification on any matters you are concerned or unclear about

- listen to the presentations and any representations by third parties at committee, listen and contribute to the debate
- come to a view on the proposal, in line with the planning policies and other material considerations.

The NPPF places emphasis on the need for planning authorities to approach decision-taking in a positive way to support the delivery of sustainable development. You should approve development that accords with your development plan unless you have clear planning reasons not to, namely unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or unless specific policies in the NPPF indicate that the type of development should be restricted.

That does not mean that you always have to say "yes" to development that clearly is unacceptable (for example for because it has an unacceptable impact on the environment, poor transport aspects, poor quality design).

Material considerations

Many issues are capable of being material considerations, but in broad terms should relate to the use and development of land. As a general principle the planning system works in the public interest and matters that affect solely private interests are not usually material considerations in planning decisions.

Your officers should be able to advise you and relevant considerations will be set out in the officer's report. What should and could be considered is dependent on each proposal.



Hints and tips **Local development plan**

Practical tip: When considering what is or isn't a material consideration, look at the range of issues and policies in the adopted local development plan, and in national policies and guidance first. They should be a good basis to start the process.



Hints and tips **Material considerations**

The following material considerations are relevant in most planning applications:

- national planning policy and guidance
- draft policy (which gains weight the further along in the process it is)
- environmental impacts of the proposal (eg impact on ecology or landscape value),
- social impacts (eg loss of privacy, light or overshadowing) , and
- economic impacts of the proposal (eg regeneration value, new homes bonus, s106 contributions)
- access (including disabled persons access) and provision of infrastructure for the site
- the design and appearance of the proposal
- the planning history of the site
- the views of organisations and individuals in relation to relevant planning matters
- the likelihood that the development will be delivered (especially including economic viability).



Hints and tips

The following issues are not material considerations for planning decisions:

- loss of views
- negative impact on property values
- competition between individual businesses
- moral considerations (eg religious objections to licenced premises)
- political or ideological opinions
- the cost of the development
- whether or not the applicant owns the site
- issues covered by other legislation (eg building regulations)
- the character of the applicant.

The planning decision

Planning applications can be **approved**, **approved with conditions**, or **refused**.

Planning conditions and obligations (S106s) can be used to make an otherwise unacceptable development acceptable. There is national guidance on the use of conditions, which along with some good practice tips, has been compiled into a crib sheet for councillors by PAS:

www.local.gov.uk/pas/dm/s106

If planning permission is refused, the authority has to clearly set out what was unacceptable and which policies were not met. Reasons for refusal have to be based on clear evidence.

Some examples of poor justifications for refusing planning permission are:

“The density is much higher than the surrounding area.”

What do you mean by ‘the surrounding area’? And higher by how much, exactly? And what if it is? That’s not evidence of **harm**?

“The site is a considerable distance from local facilities and the bus service is poor.”

Which ‘local facilities’? How far is ‘a considerable distance’? How frequent is the bus service?

Instead, use verifiable **fact** and informed and reasonable **commentary** upon the facts

“The net density of the scheme is 90dph, compared with an average of 22dph within the area shown on the plan. In my opinion this great discrepancy, while perhaps not conclusive, is an indication of the incompatibility of the design with the existing character of the area.

The nearest primary school/shop/etc to the site is about... miles away along an unlit road with no separate footway. I consider it highly unlikely that anyone would make the journey on foot. There is a bus service, but it runs only twice a day. I conclude from this that the vast majority of trips to and from the development will be by private car.”

An applicant can appeal to the Planning Inspectorate against a refusal (or against conditions on an approval). An independent Inspector will consider the application and make a decision on it, based on the plan for the area unless there are material considerations that justify taking a different view. The Inspector may come to a different view from the local planning authority and decide that planning permission should be granted or subject to other conditions. This does not mean they have disregarded the views of the local planning authority or local residents – rather that they have attributed different weight to the issues in coming to their decision.

What do I need to know about how a planning committee operates?

There are two guiding principles to keep in mind at planning committee:

- One of the key jobs of the planning system is to balance private interests in the development of land against the wider public interest. Planning often affects land values (for better or worse) and local planning authorities therefore need to make decisions that affect these property interests openly, impartially and with sound judgement and justifiable reasons.
- Perception of bias, impropriety or unfairness can be as damaging to the reputation of the council as reality. As the planning committee is a 'shop window' for a council, it is important to ensure that the committee is well managed and the consideration of issues and decision making is clear and well managed. The behaviour of individual members can have a disproportionate impact of the perception of the committee as a whole.

Your officers will have prepared a report that sets out a description of the proposal, relevant policies and material considerations, the responses to the consultation, and an assessment of the impacts of the development. There will be an evaluation and a recommendation to grant or refuse permission.

Your job on committee is to take on board the information in the report, to listen to the discussions and any submissions and to reach your own conclusions with regard to the weight that is given to each consideration.

Planning committees can and, at times, do make a decision that is different from the officer recommendation. There is nothing wrong with this provided that the decision is based on proper planning grounds, and accords with planning policy unless material considerations dictate otherwise.

Bias, predisposition and predetermination

Pre-determination is where a councillor has a "closed mind" i.e. the mind is made up before having the opportunity to hear or consider all the relevant matters at committee. This could leave the committee's decision susceptible to challenge by a judicial review. If a councillor has predetermined their position, they should withdraw from consideration or decision making for that matter. This would apply to any member who wanted to speak for or against a proposal as a campaigner or as an advocate speaking on behalf of constituents.

Predisposition however reflects the common law position that a councillor may be predisposed – i.e. have an opinion - on a matter before it comes to committee, provided they remain open to listening to all the arguments presented at the meeting and the possibility of changing their mind as a result.

The Localism Act 2011 (S25) defined this further by indicating that a councillor should not be regarded as having a closed mind simply because they previously said or did something that directly or indirectly indicated the view that they might take in relation to a particular matter.



Challenges

Think about how these statements demonstrate the views of the speaker (councillor) and how they are likely to be perceived if made before or during committee.

“Windfarms are blots on the landscape and I will oppose each and windfarm application that comes before the committee.”

“Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our district.”

“We have long wanted new doctor’s surgery in this location and I am inclined to support the proposal. But there are clearly concerns from the community about how this will operate, and I want to know whether these can be satisfied.”

“If the community that I represent doesn’t like it, then it’s not getting my vote.”

“Jack Taylor is an honourable man, if he says that he will sort out this access issue, then he will do so.”

“I understand that the applicant is willing to enter into a s106 agreement to provide a new access in an acceptable location and that seems to me to provide a satisfactory solution.”

Registration and disclosure of interests

The Localism Act 2011 places requirements on councillors regarding the registration and disclosure of their pecuniary interests. Failure to disclose a pecuniary interest is a criminal offence.

There is a further range of personal interests where it may be appropriate to declare and withdraw from consideration of a planning application. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

For full guidance on interests it is recommended that you consult the Department for Communities and Local Government guidance March 2013 'Openness and transparency on personal interests'¹. If you are unsure, or you think you have an interest, then discuss it with your legal and/or monitoring officer.

Each council will have a code of conduct for their members.



Hints and tips **Tips for being most effective in committee**

Be prepared (read the officers report carefully).

Be aware of the need for probity and the public perception of your actions (declare interests if necessary).

Be focused: focus on the evidence and precisely how where and why you agree or disagree with officer assessment.

Know the thrust of policies in the NPPF, your Local Plan and any neighbourhood plans.

Stick to policies and material considerations.

If you are unclear or have questions ask the officers in advance of the committee.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf

Infrastructure contributions and community benefits

Most development has an impact on or benefits from infrastructure such as roads, schools and open spaces. It is there expected that development should contribute towards the mitigation of its impact on such infrastructure.

Local planning authorities can put in place a Community Infrastructure Levy (CIL) a charge which new developments pay, based on the size and type of development (although there are exemptions granted for certain categories of development).

The money raised through the Levy can be used to fund a wide range of infrastructure needed to support the development of the area. Local planning authorities can, and do, set different rates for different areas, types and scales of development including low or zero levy rates, to ensure that the charge does not itself make development unviable. To charge the Levy, local planning authorities must first produce a 'charging schedule'. The charging schedule for the Levy is often developed alongside a Local Plan and will be independently examined.

To ensure that the benefits as well as the costs of development are shared by communities, 15 per cent of the Levy must be passed to the parish council where the development took place. If there is a Neighbourhood Plan in place it is 25 per cent. Where there is no parish council, the local planning authority should retain these funds to spend in consultation with the community.

Planning obligations (S106) are used to mitigate the impact of proposed developments and if there is no CIL in place, can secure some contributions to infrastructure. S106s are also the route for securing – in-line with the authority's policies – affordable housing. There are some tests that a S106 need to meet:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development.

The New Homes Bonus is a grant paid by central government to local planning authorities for providing homes in their area, whether through building new homes, converting existing buildings to residential uses or bringing long-term empty homes back into use. The money raised through the New Homes Bonus can be spent by the relevant local planning authority in any way they feel is appropriate to support services in their area.

Planning enforcement

An enforcement service is a vital part of the credibility of the planning process. By identifying and tackling cases of unauthorised development (which might be that something doesn't have planning permission when needed, or a scheme is being implemented that differs from that which got permission), should ensure fairness, stop unacceptable development, and give communities confidence in the system.

Although responses to breaches of planning control should always be proportionate. Where work has been undertaken without the necessary permission there is scope to apply for retrospective planning permission. This does not condone development being undertaken without the correct permissions, but gives the applicant and the council the chance to fully consider the merits of the proposal and come up with an appropriate response.

It is not against the law to undertake development without planning permission (although failure to comply with an enforcement notice is).



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