

**THE SURREY CODE OF BEST PRACTICE
IN PLANNING PROCEDURES**

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THE SURREY CODE OF BEST PRACTICE IN PLANNING PROCEDURES

1 INTRODUCTION

- 1.1 The third report of the Committee on Standards in Public Life (the Nolan Committee) recommended that all planning committees should consider whether their procedures were in accordance with best practice, and adapt their procedures if necessary, setting them out in a code accessible to members, staff and the public.
- 1.2 **One of the key purposes of the planning system is to balance the applicant's interests in the development and use of land against the wider public interest.**
- 1.3 **Although much of this Code applies only to Members (including substitute Members) of the Planning and Regulatory Committee, some aspects affect any Member who becomes involved with a planning matter.** This Code of Best Practice aims to provide clear guidance to Members about how they should carry out their duties in relation to planning and development proposals.
- 1.4 This Code should be considered in conjunction with the Members' Code of Conduct, the Member/Officer Protocol and the Media & Publicity Protocol.

2 ROLE OF MEMBERS

Committee members

- 2.1 Members of the Planning and Regulatory Committee act in a semi-judicial capacity making decisions on planning and development proposals.
- 2.2 It is recognised that voting members of the Planning and Regulatory Committee have an overriding duty to the whole community, and not just the people living or working in their division, when considering proposals brought to the committee. Whilst Members should bring to planning decisions a sense of the community's needs and interests, they have the difficult task of **combining** their duty to represent the interests of the community with an obligation to remain within the constraints of planning law. They must only take account of relevant matters, i.e. sound land use planning considerations, **not political or council priorities**, and must have regard to the development plan and government policy. Local feelings may run high but these must be weighed carefully against all material considerations. The officer's report will deal specifically with these matters **in order to inform the committee's considerations** and so that Members can arrive at an informed decision.
- 2.3 Members of the Committee are required to observe the Members' Code of Conduct as set out in this Constitution.

Local Members on the Committee

- 2.4 It is recognised that a local Member can give support to a body of opinion whilst not advocating for a particular outcome. If a member of the committee felt they wished to support a particular outcome on a local matter coming to the committee for consideration, the Member could speak as the local Member as long as they declare their intention at the meeting, move to act as the local Member, **do not participate in the debate**, and do not vote on the application.
- 2.5 Members of the committee who wish to act as the local Member on a particular application must inform the Chairman of the committee and Committee Manager of their wish to speak as such following the agenda publication and prior to the committee meeting. They will then be entitled to speak as a local Member rather than a member of the committee.
- 2.6 If there were several items for consideration at the meeting where the committee member wished to act as the local Member, it would be better for the Member to appoint a substitute and attend the meeting as the local Member only.
- 2.7 If a Committee member wished to participate in the consideration and voting on a particular issue at the committee, they should avoid **being associated with or** leading a campaign or organising support for or against the planning application.

Local Members not on the Committee

- 2.8 Members who are not members of the Planning and Regulatory Committee may wish to address the committee on a matter within their division. In this circumstance, they will inform the Chairman and Committee Manager of their wish to speak prior to the meeting. **The order of speakers, which includes representations from a Local Member, is found at Point 7 of this document.** The Chairman may terminate a speech by a Member if s/he considers that it is not contributing to the effective working of the meeting.

Twin-Hatted Members

- 2.9 Members of the Planning and Regulatory Committee who sit on borough, district or parish councils need to ensure that, when they consider planning applications on which they have been consulted in their capacity as a councillor of another Council, that they come to the matter with an open mind
- 2.10 Where an application has been discussed at a meeting at another Council at which the Member was present they should declare this before proceeding to consider the matter at County level on the basis of the reports and information presented to the committee.

Planning applications by Council Members

- 2.11 When the committee considers a planning application submitted by a Council Member, the Member who submitted the application will be entitled to speak to officers prior to the committee as an applicant but not as a Council Member. The Council's Monitoring Officer will be informed of all applications by Members and officers.
- 2.12 When the committee considers a planning application submitted by a committee member, the Member must withdraw from the committee, speak on the application

when the applicant is provided the opportunity to address the meeting, and then withdraw from the room for the consideration and voting on the application.

- 2.13 If a Member has acted in a professional capacity for any individual, company or other body pursuing a planning matter then that Member must declare any disclosable pecuniary interest and act in line with the Members' Code of Conduct. If the Member is a member of the committee, they should withdraw from the committee for this item.

3 DECLARATION AND REGISTRATION OF INTERESTS

Members will make oral declarations at the Planning and Regulatory Committee of significant contact with applicants and objectors, in addition to the usual disclosure of pecuniary interests, **especially in relation to involvement with any County Council proposals resulting in a Regulation 3 planning application to be determined by the Planning and Regulatory Committee.**

- 3.1 The law and guidance on the declaration of disclosable pecuniary interests as set out in the Members' Code of Conduct and the Council's Standing Orders, must be observed and upheld by all Members and officers. At committee meetings Members will make oral declaration of significant contact with applicants or objectors
- 3.2 Members who have substantial property interests or involvement with the property market or other interests which would prevent them from voting on a regular basis will avoid serving on the Planning and Regulatory Committee.
- 3.3 Members should bear in mind the potential for their interests to affect the decisions they may take on such matters, even if such interests do not amount to disclosable pecuniary interests. If a member's interest in a matter would lead them to predetermine a decision, it would not be appropriate for that member to participate in the decision, even if they are not subject to any specific statutory prohibition relating to disclosable pecuniary interests. If they were to do so, they would be at risk of breaching the code of conduct and making the authority's decision vulnerable to challenge.

4 TRAINING

Before sitting on the Planning and Regulatory Committee new Members must undertake a period of training in planning law and procedures

- 4.1 No Member can act as a member of the Planning and Regulatory Committee without having previously attended training by the Council's lawyers and planning officers on the legal and practical aspects of the operation of the Town and Country Planning system such training will also be required for both ex-officio Members and named substitutes.
- 4.2 **Additional training on specific/specialist topics and matters may be provided which are relevant to planning applications coming forward for determination at committee.**
- 4.3 Members are encouraged to attend training sessions relating to planning or related legal matters, these sessions are open to all Members.

- 4.4 The County Council will from time to time consider and review the form of training that is most appropriate. **Officers, in consultation with the Chairman**, will welcome suggestions from Members on any other subjects which they would like to see covered and any other training procedures that they would wish to adopt.
- 4.5 **Refresher training will be provided as and when officers, in consultation with Chairman, deem necessary.**
- 4.6 **There will be an annual training session for the committee involving visits to a sample of implemented planning permissions to assess the quality of the decisions in order to help improve the quality and consistency of decision making, strengthen public confidence in the planning system and to help with reviews of planning policy.**

5 SITE VISITS

- 5.1 Site visits will be arranged to familiarise members with land or buildings which are the subject of a planning application and the surrounding area where there is a clearly identified benefit to be gained because a proposal is contentious or particularly complex and/or the impact might be difficult to assess or visualise from the submitted information or plans.
- 5.2 **Dates for site visits prior to each meeting date will be set in advance as part of the committee schedule.**
- 5.2 A record will be kept by the Committee Manager of such visits and those attending. **There is no debate on the merits of the application at a site visit. No minutes or record of the discussion is made.**
- 5.3 The need for a site visit will be determined by the Planning Group Manager **or the Planning Development Manager** in consultation with the Chairman of the committee in advance of the application being considered by the committee. Any member of the committee who considers that a site visit would be useful in respect of a particular application should contact the Committee Manager in advance of the committee meeting.
- 5.4 All members of the committee are invited to attend site visits, together with the local Member(s). Where a proposal could have a significant impact on an adjoining electoral division or divisions the adjoining local Member(s) will also be invited. **Members of the committee are strongly encouraged to attend site visits.**
- 5.5 All Members attending site visits should be accompanied by an officer. If access to private land is necessary the case officer will secure the prior agreement of the land owner/operator/applicant who will be advised against lobbying and asked to provide only factual answers or information to Members.
- 5.6 Any persons present at a site visit who are neither Members nor officers of the Council may observe but not participate in the site visit.
- 5.7 Site visits are not part of the formal consideration of the planning application therefore public rights of attendance and speaking do not apply.

5.8 As noted above, the site visit is arranged first and foremost for the Members of the Committee to see the site in its context. It is not an opportunity to lobby the committee by any parties – applicants, objectors, local or adjoining members. Discussion on an application should only take place in the meeting where it is determined. Members will not debate or comment on the planning merits or otherwise of a proposal. For the avoidance of doubt, the respective roles of the parties are as follows:

5.9 Chairman/Vice-Chairman - To ensure that this protocol is adhered to and to ensure that the site visit is conducted in an orderly fashion.

5.10 Officers – To lead the site visit and to introduce the site and the proposal and to bring any relevant planning matters to the attention of the Committee.

5.11 Members of the Committee – To follow the instructions of the Officers and only seek factual clarification from the applicant. They should avoid being lobbied on site by any parties and should avoid indicating to any parties how they are likely to vote when the matter is considered by Committee. Members of the Committee should not break into smaller groups with applicants, objectors or local or adjoining members without an officer to ensure that all members receive the same information and there is no actual or perception of being lobbied.

5.12 Landowner/Operator/Applicants and their Consultants – Attend purely to facilitate the site visit, explain their proposals and to answer factual/clarifying questions. Shall not engage in lobbying of committee members.

5.12 Objectors – Have no right to attend site visits and can only observe from publicly accessible land.

5.13 Local and Adjoining Members – Will be given a short opportunity to explain the main issues for the local community at the start of the site visit following the Officers' introduction, shall only direct questions via the officers and shall not lobby the Committee on site, either collectively or individually.

5.14 The expectation is that site visits will be conducted on this basis. The Chairman/Vice-Chairman in conjunction with the attending Officers may decide to end a site visit if not.

6 LOBBYING OF AND BY COUNCILLORS

Members should avoid indicating their likely decision on an application or otherwise committing the Authority during contact with applicants and objectors.

- 6.1 Members of the Planning and Regulatory Committee keep an open mind when considering planning applications in accordance with the relevant planning considerations. Members must not favour any person, company, group or locality. However Members who have previously done something that directly or indirectly indicated what view they took, would or might take in relation to a matter and the matter was relevant to the decision but who come to the Committee prepared to hear all relevant considerations will not be perceived to have a closed mind when voting on the application
- 6.2 Members involved in decision making on planning applications should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Members, act as advocate or put pressure on officers for a particular recommendation. However, Members not on the Committee can make written representations on an application

Attendance at public meetings

- 6.3 When Members attend public meetings, they may request that an officer attends with them. Wherever possible such meetings should ensure that representatives of both proposers and objectors are allowed to present their views. Members will be subject to lobbying on specific applications and in such cases it is essential that care is taken to protect the public perception of the independence of the planning process.

Committee Pre-Meetings

- 6.4 All committee pre-meetings will be held when necessary as agreed by the Chairman and the Planning Group Manager or Planning Development Manager to give the committee the opportunity to seek clarification and ask any factual or technical questions in advance of the committee. The merits of any particular application will not be discussed at these meetings and a record of the discussion will be kept by the Committee Manager.**

7 COMMITTEE MEETING PROCEDURE

- 7.1 The following procedure will apply in respect of each item when any of the persons identified are eligible to speak at the meeting:
- Chairman introduces the item
 - **Introduction of item by officer(s)**
 - Representations by objector(s)
 - **Chairman invites points of clarification of objector(s) from Members**
 - Representations by supporter(s)
 - **Chairman invites points of clarification of supporter(s) from Members**
 - Representations by applicant or agent
 - **Chairman invites points of clarification of applicant or agent from Members**
 - Representation by local Member(s)
 - **Chairman invites points of clarification of local Member(s) from Members of committee**
 - ~~Introduction of item by officer(s)~~ **Chair invites officers to respond to matters raised**
 - Consideration of application by committee **and decision**

8 OFFICER REPORTS TO COMMITTEE

All applications considered by a Planning Committee should be the subject of full written reports from officers incorporating firm recommendations.

- 8.1 All applications considered by the Committee will be the subject of a full written report by officers incorporating firm recommendations. These reports will deal with national and local plan policies and guidance and **comments** made by statutory and **non-statutory consultees**, local residents and other interested parties. An update sheet will be provided at Committee ~~only~~ if there have been any significant developments or changes to the report **and to update the position on consultee comments and representations received since the agenda was published.**
- 8.2 **Officers involved in the processing and determination of planning matters must act in accordance with any appropriate officer and professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with corporate and member aspirations and priorities.**
- 8.3 Proposals for the County Council's own development **with 5 or more objections** must by law be determined by the Planning and Regulatory Committee and will be treated in the same way as any application submitted by a private developer. Decisions will be made strictly on planning merits.
- 8.4 In any case where the Planning and Regulatory Committee is minded to refuse a planning application for County Council development, it will refer the application back to the applicant with the grounds for refusal which would apply were it to determine the application. This will provide the applicant an opportunity for the applicant to reconsider the application in discussion with the Planning **Group or Planning Development** Manager before deciding whether or not to resubmit the original application or to amend it in some way.
- 8.5 Where the committee decides to approve or refuse an application when the officer's recommendation has been to permit the application, the Committee must provide detailed reasons for its refusal.
- 8.6 If, having read the committee report, a member of the committee is minded to vote against the officer recommendation they may find it helpful to liaise with the Planning **Development** Manager, **Planning** Development Control Team Leader or **the relevant** Case Officer with regards to wording of possible reasons for refusal that could be put forward to the committee if they are still so minded following the discussion at the committee. There is nothing to prevent a Member from seeking advice from officers before a committee meeting. In this instance, the committee member should declare that s/he had discussed possible reasons for refusal prior to the meeting but that s/he would consider all the information presented at the meeting before deciding what course of action to take.

9 LEGAL REPRESENTATION AT COMMITTEE

- 9.1 An officer from the Council's Legal and Democratic Services will attend meetings of the Committee to advise Members on legal and procedural matters.

10 DETERMINATION OF APPLICATION

The reasons given by a Planning Committee for refusing or granting an application should be fully minuted.

- 10.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined in accordance with the development plan, if material to the application, and all other material considerations.
- 10.2 The County Council recognises that planning decisions are often matters of fine judgement. The officer's report will normally rely heavily on planning policy and Members may exercise their discretion to permit an application as an exception to policy or disagree with the recommendation.
- 10.3 Where the committee wishes to make a decision contrary to the officer's recommendations (whether for approval or refusal) a member will move a motion which will be seconded and a vote taken. If the motion is carried the committee will agree the reasons for refusal (or any conditions if approved) after taking advice from officers on the correct policy references. If this cannot be completed during the debate, the committee may then adjourn or proceed with the agenda whilst the Planning **Group Manager** **or Planning Development Manager** consider the formal wording of the decision to go against officer recommendation. This wording will then be presented to the committee when the meeting reconvenes to approve or amend the wording.
- 10.4 If a decision cannot be reached on the wording of reasons at the meeting, the committee may delegate this action to the Planning **Group Manager** or **Planning Development Control Team Manager** in consultation with the Chairman of the committee, the proposer and the seconder of the approval or refusal of the proposals.
- 10.5 There will be full and accurate minuting of resolutions with a careful record being kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise, or cause to be summarised, the salient points of the debate, and ensure the text of the proposition is clearly understood before putting the matter to the vote. The officers will support the decision of the committee.
- 10.6 A Member shall decline to vote in relation to any planning application unless he or she has been present in the meeting of the committee throughout the consideration of that particular item.

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