

# Introduction to Planning and Making Defensible Planning Decisions

Dover District Council  
May 2023

Gilian Macinnes

# All new or a refresher?

- New to planning/committee?
- Refresh / update?
- Pass on your experience

# Objectives for this session

- To understand and think about how Planning decisions are made
- How decision making can be improved
- Justifying Planning Decision to:
  - Applicants
  - Residents
  - Inspectorate
- Avoid costly mistakes
- Enhance Council's reputation as sound and fair decision makers

# This is a discussion about...

- Context for decision making
- How a decision is made
- Councillors' role
- Defensible decisions, consequences



# The role of decision-making

- Not just about stopping bad developments from happening
- It is about delivering **your** Local Plan for the **whole community**
- Being positive & proactive to encourage delivery



# Planning

- Manages growth in the public interest;
- Sets out the long term vision for places;
- Provides a decision making framework to manage competing uses for spaces;
- Balances economic, social and environmental needs;
- Provides legitimacy through consultation and testing evidence
- Delivers change on the ground

# Planning creates headlines

## Heavy-handed council workers order couple to apply for planning permission... for their daughter's Wendy house

By Daily Mail Reporter



## Councillor sorry for planning error

Written by CHRIS HAVERGAL

A top councillor has apologised for breaking planning rules after a bike shed was installed without permission outside her home.

No planning application was submitted before the 12ft-wide wooden shed was built outside the Bulstrode Gardens home of Cllr Lucy Nethsingha, who represents Newnham on Cambridgeshire County Council.



08/05/13 Councillor's unauthorised bike shed - Newnham, Cambridge  
08/05/13 Scenesetter Bulstrode Gardens, Cambridge.

**Concerns raised over comments caught on webcast at planning meeting**

**Planners must be barmy**

# The context for decision making

- ‘Development’ requires planning permission
- Some of which is ‘permitted’ (PD)
- Recent changes in the Use Class Order have taken many changes of use out of the planning system
- Most decisions made by local councils
- Refusals (and conditions) are open to appeal
- Judicial Review and Ombudsman





# The decision can be challenged

- Appeal; Secretary of State, PINS
- Costs for unreasonable behaviour
- Judicial Review and Ombudsman



Local Government &  
Social Care  
**OMBUDSMAN**

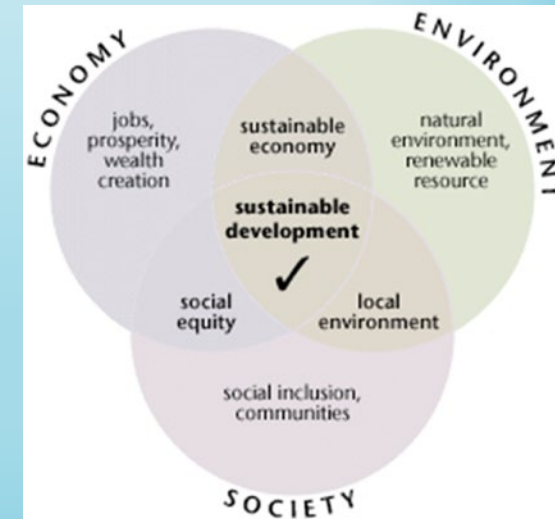
# What decisions are made by Committee?

- It is up to you. However .....
- Committee should only make the decision when it needs public scrutiny
- Only make the decision by Committee if it is in the public interest otherwise leave to officers
- Most Councils have a delegation rate over 90%



# Planning in England is policy-led

- national policy
  - National Planning Policy Framework (NPPF)
  - National Policy Statements
  - Specialist policy such as Gypsy and Traveller guidance
  - (Planning Practice Guidance)
- local policy
  - Local plan /Development Plan
- neighbourhood policies
  - neighbourhood plans



# Sustainable development; the 'presumption'

At the heart of the National  
Planning Policy Framework  
(NPPF)

*2. Achieving sustainable  
development*

*7.... the objective of sustainable  
development can be summarised as  
meeting the needs of the present  
without compromising the ability  
of future generations to meet  
their own needs.*



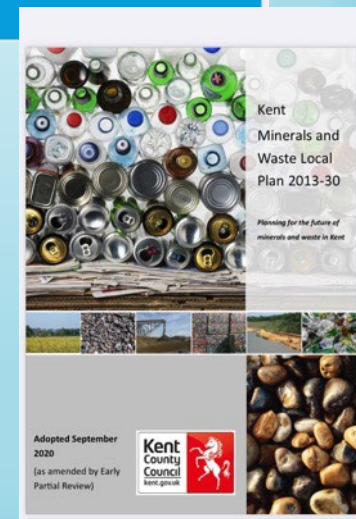
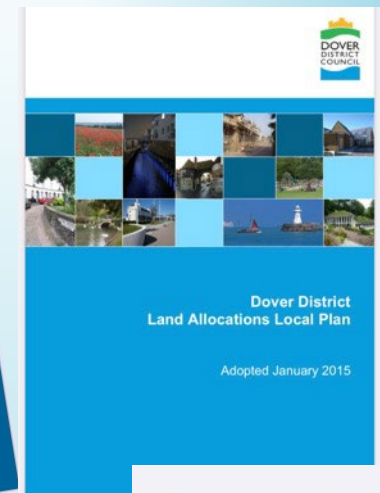
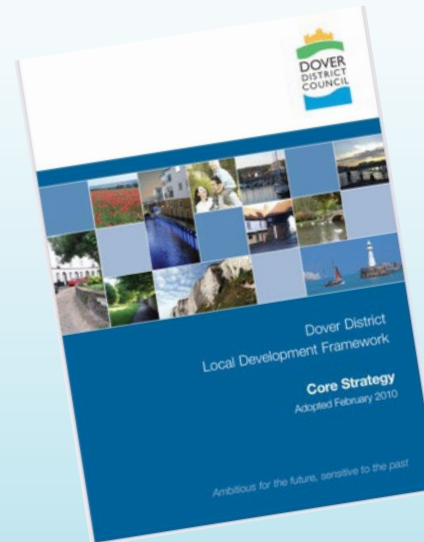
Ministry of Housing,  
Communities &  
Local Government

National Planning Policy Framework



# ‘Basic principle’: start with the plan

- “.....have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.



**Know and Understand your Development Plan**

National Planning Policy  
Framework

**Dover DC**

Dover District- Core  
Strategy February 2010

Dover District- Land  
Allocations Local Plan 2015

Kent Minerals and Waste  
Local Plan 2013-30

Neighbourhood plans (Made)  
i.e. Ash 2021, Worth 2015

**Development Plan**

Supplementary Planning  
Documents

# NPPF and decision making



For decision-taking this means:

Approve proposals that accord with an up-to-date development plan without delay; or

Where there are no relevant development plan policies, or the policies are out-of-date, grant permission unless:

- (i) policies in the NPPF that protect areas or assets provides a clear reason for refusal
- (ii) adverse impacts of doing so would significantly and demonstrably outweigh the benefits

# What that means in practice is...

If in doubt; approve

**PLANNING GRANTED**



Please reply to: Adam Squires  
Email: [planning.decisions@enfield.gov.uk](mailto:planning.decisions@enfield.gov.uk)  
My ref: 17/02811/HOU  
Date: 1 September 2017

Dear Sir/Madam

In accordance with the provisions of the Town and Country Planning Act, 1990 and the Orders made thereunder, and with regard to your application at:

**LOCATION:** 21 Oakfield Gardens London N18 1PR  
**REFERENCE:** 17/02811/HOU  
**PROPOSAL:** Rear Conservatory (PART RETROSPECTIVE)

**ENFIELD COUNCIL**, as the Local Planning Authority, give you notice that the application, as described above, is **GRANTED**, subject to the following conditions:-

1 Within three calendar months of the date of this Decision Notice, the works to reduce the depth of the conservatory as per the approval hereby given, shall be completed, and photographic evidence submitted to the Council upon completion.

Reason: To ensure that the works are undertaken in a timely manner in order to minimise the otherwise harmful impact on the existing amenities of the adjoining occupiers in terms of loss of daylight and loss of outlook, having regard to adopted DMD11 and DMD37 of the Development Management Document.

2 Unless required by any other condition attached to this Decision, the development hereby permitted shall be carried out in accordance with the following approved plans and documents:

DPL.05. Existing Side Elevation  
DPL.08. Proposed ground floor plan  
DPL.11. Proposed rear elevation  
DPL.2. Existing roof plan



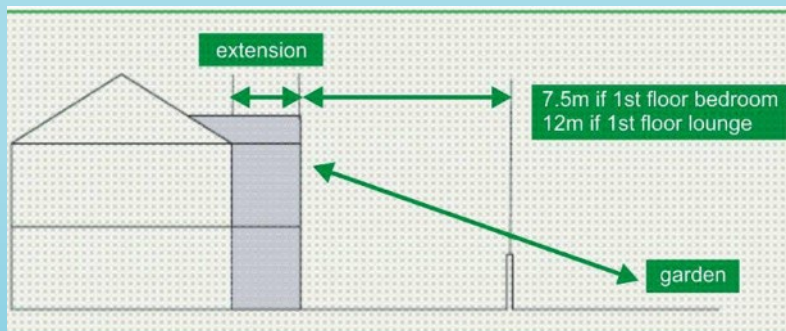
# Material Considerations

- Material considerations are decided by statements of national policy or by decisions of the courts
- the weight that should be attached to each consideration in any particular case is for the decision maker



# Material Considerations

- Overlooking / loss privacy
- Loss of daylight / sunlight
- Effect on listed building
- Layout, density
- Development plan
- Previous decisions/appeals
- Natural environment
- Flood risk
- Parking
- Highway safety
- Traffic
- Noise
- Design, materials
- Govt. policy
- Disabled access



# Non-material Considerations

- House prices and house insurance
- Personal circumstances
- The conduct of the applicant
- The strength or volume of opposition / objection
- Loss of a *private* view
- Damage to property or Party Wall Act matters
- Loss of trade
- Boundary disputes or covenants



# Planning involves balancing issues

- economic growth
- rural housing need
- long term strategies
- brownfield development
- retail “market forces”
- Employment opportunities

- climate change
- countryside protection
- Heritage Issues
- high density development
- viability of town centres
- Affordable Housing



# “Can we *ignore* the Development Plan?”



- No, that would be unlawful (s38 Planning and Compulsory Purchase Act 2004 )
- And anyway it's *your* plan, so why would you?

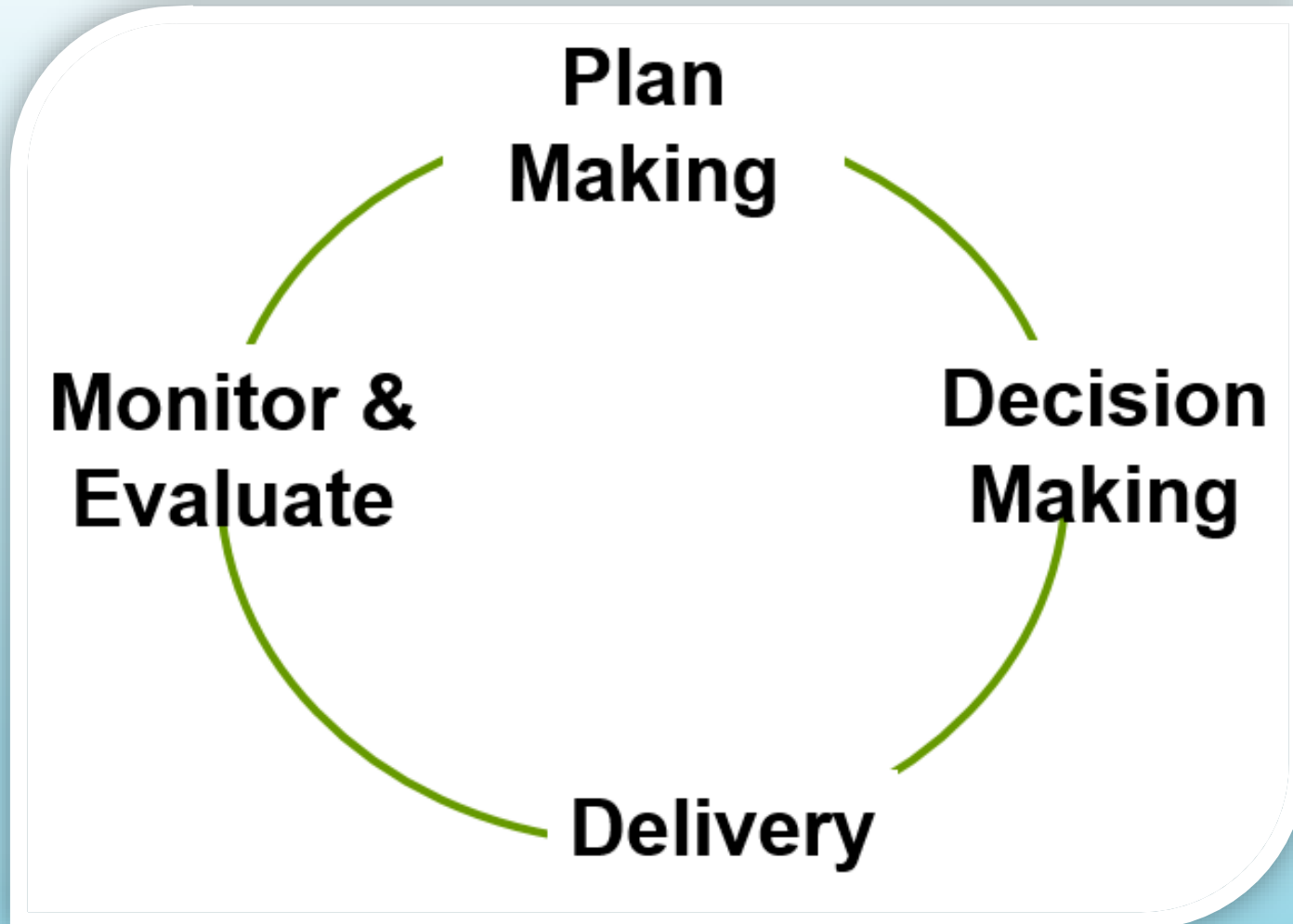
## Can you take a decision which seems to *conflict* with the Plan?

- Yes – so long as it is based on the merits of the case, in the light of all other material considerations, for example:
  - a policy is out of date compared with national policy
  - the monitoring information shows that the situation “on the ground” has changed
  - an unforeseen opportunity has arisen

# Questions ?



# The wonderful circle of planning



# 5 Year Housing Land Supply and Housing Delivery Test



- Have a plan in place = **Monitor & Drive** the delivery
- 5 Year Housing Land Supply (5YHLS) –6 years
- Housing Delivery Test (HDT) -88% (anticipated 102%)
- Out of date Plan 5 years old +





# Tilted balance

- Out of date local Plan
- Presumption in favour of sustainable development triggered:
  - Where there is less than a 5 year Housing land supply
  - Where housing delivery falls below 75%
- Except where Neighbourhood plan
  - 2 years old or less
  - Has policies/allocations to meet identified housing need
  - LPA has at least 3 year supply
  - LPA HDT at least 45% over last 3 years

# Questions ?



# Policy v legislation - Nature and biodiversity in planning



- Policy is part of the wider planning balance, so can be weighed up against other policy requirements.
- Legal requirements are ‘must-do’s and include:
  - **Environmental Impact Assessment (EIA)**
  - **European Sites** protected under the **Habitats Regulations**:
  - **Sites of Special Scientific Interest (SSSI)**
  - **European and nationally protected species**
  - From November 2023, **10% biodiversity net gain** will be mandatory for all development, except for a few exemptions and for small sites. It will be mandatory for small sites from April 2024.
- Biodiversity PAS FAQs - <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities/biodiversity-net-gain-faqs>

# The Role of Case Law-

## Amongst other things it:

- Sets out principles e.g. reasonableness (Wednesbury)
- Identified what is material in decision making
- Approach to decision making – Tesco Stores v Dundee CC (development plan unless good reason to depart, proper understanding of policy, application of policy requires a planning judgement)



# The Role of Case Law-

## Amongst other things it:

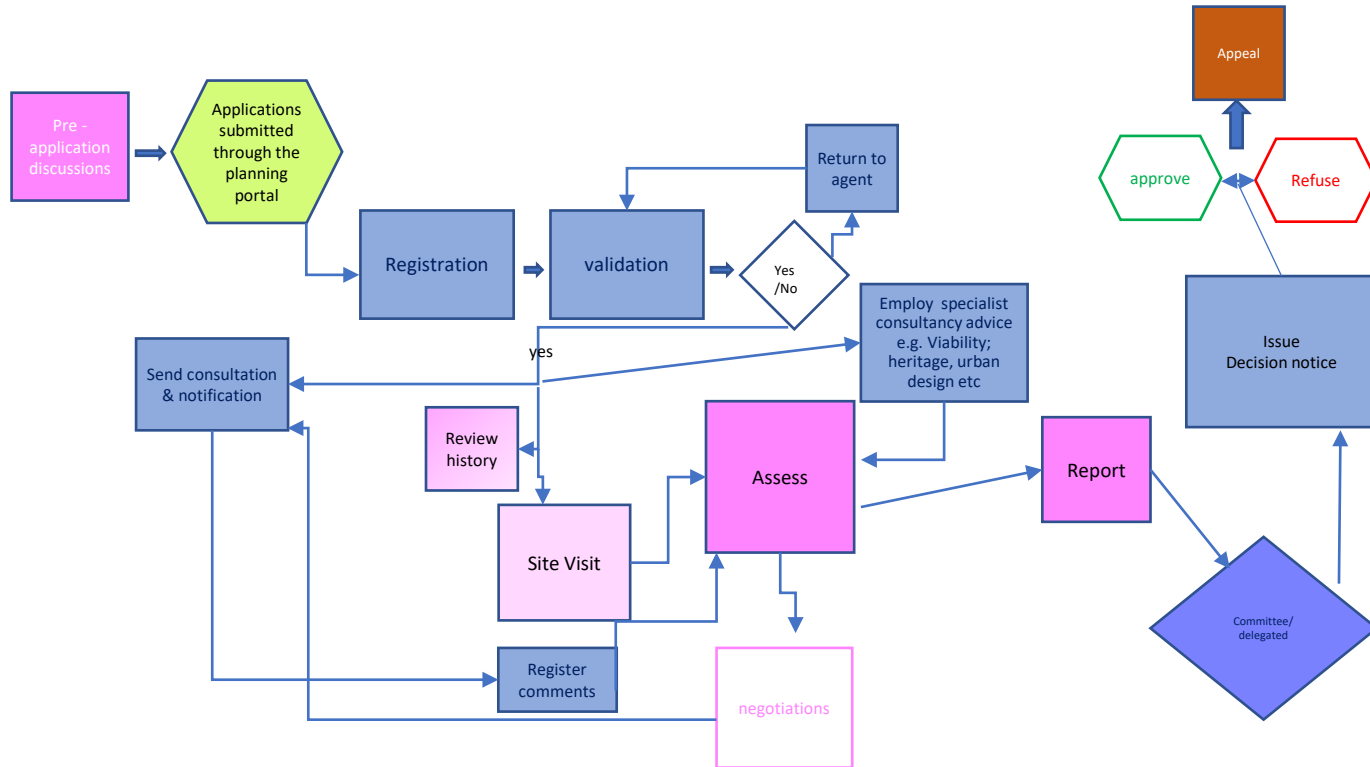
- Sets out acceptable procedural approaches e.g. publishing viability assessments (Holborn Studios)
- Clarifies policy
- Use of S106 – Aberdeen; Resilient Energy



# Questions ?



# The Life of a Planning Application



# Planning Application types

- Planning Application Full
- Planning Application Outline – followed by Reserve Matters
- Hybrid Applications
  
- Followed by submission of conditions



# Other types of application

- Listed Building Application
- Conservation Area Application
- Advertisement Consent
- Permission in Principle
- Prior notification
- Lawful Development Certificate – Existing
- Lawful Development Certificate –Proposed

# Imposing Conditions

- When used properly, conditions can enhance the quality of development **and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development..**

# Conditions - The 6 Tests:

- Conditions can make otherwise unacceptable development acceptable.

National Planning Policy Framework states:

“Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning and;
- to the development to be permitted;
- enforceable;
- precise and;
- reasonable in all other respects.”

- <https://www.gov.uk/guidance/use-of-planning-conditions>

# s106 Planning Obligations



- Only to be used for a planning purpose
- Can make otherwise unacceptable development acceptable.

## Planning Obligations (Sec 106) – Tests\*

- Necessary to make development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development.

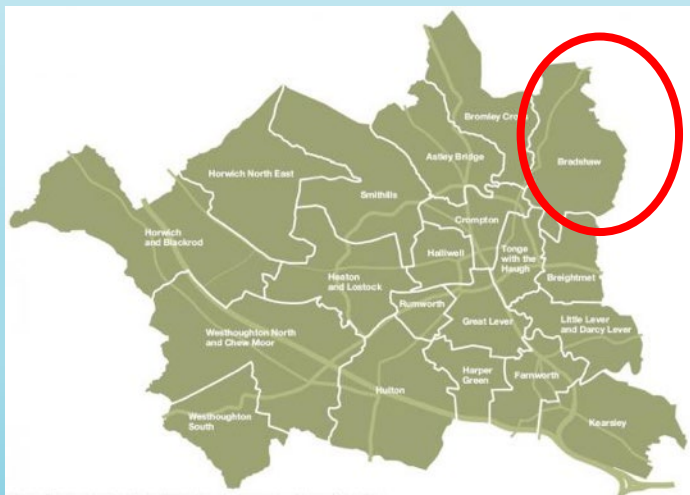
\* legal test for Infrastructure Regulation 122 of the CIL Regs and policy test (NPPF) for everything else

# Roles of Officers and Members

- Councillors and officers have different but complementary roles.
  - Both serve the public but councillors are responsible to 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.
- 
- [Planning Code of Good Practice \(P320\)](#)
  - <https://www.dover.gov.uk/Council--Democracy/Councillors,-Decisions--Meetings/PDF/Constitution-2023-Issue-25a-FINAL-310323.pdf>

# The councillor's role depends on...

- Member of the planning committee
- Ward member
- Cabinet member
- Political Group member



or



# The Planning Committee Councillor's role

- Over 90% of applications are 'delegated'
- **Leaving you to deal with the most contentious**
- Balance material considerations / evidence



# Make no mistake..

What you have to do on Committee can be difficult.

Officers make lots of more straight forward decisions fairly anonymously but you have to:

- Make all the really contentious decisions
- Make those decisions in the public arena



# Make no mistake..

The decisions you make are life changing

Planning Committee is a shop window for the Council, It is usually watched by more people than other Council meetings.



# Duty of a Planning committee member

- Making decisions: **your duty is to the whole community**
  - Avoid bias: predisposition v predetermination
  - Consider the implications for the wider community not just those making representations
  - Only take into account **material planning considerations** including precedents and previous decisions – “benchmarks”
  - Base decisions on evidence not hunch – reasonableness
  - Jurist or elected representative?

# Examples of predisposition and pre determination



**Predisposition** – A councillor expresses concern about the impact of a development on local residents and will only support the application if conditions could be put in place to overcome the harm

**Predetermination** - A councillor makes a statement on social media to say that they will support local residents by voting against the development due to the harm it will cause

# Predetermination /Bias

- *“Members of a planning committee, local plan steering group or full council (when the local plan is being considered) need to avoid any appearance of bias or having ‘predetermined’ views when making a decision on a planning application or policy.*
- *Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a ‘closed mind’ approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.”*
- *[https://www.local.gov.uk/sites/default/files/documents/34.2\\_Probity\\_in\\_Planning\\_04.pdf](https://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf)*
- Being involved in Parish or Town Council Planning meetings should be avoided – it would be difficult to vote at a Parish meeting and not appear predetermined.

# Perception

Perception

Perception

Perception

Perception

# Questions ?



# Committee application and determination

- Prepare, read the papers!
- How much weight to give to the issues?
- Considered conditions/reasons before meeting?
- Taken advice on legal/enforceable/reasonable?
- Discussed concerns with officers before Committee?

**BOROUGH COUNCIL**

**PLANNING COMMITTEE** 12th August 2015

Planning Application 2015/065/PUL

Change of use of existing Victorian two storey office unit to two bedroom news house.

Harris & Associate Surveyors Limited, British Mills, Prospect Hill, Riverside,

Applicant: Mr J Harris  
Expiry Date: 6th July 2015 extended 13 August 2015  
Ward: ABBEY

(see additional papers for Site Plan)

The author of this report is Sharon Williams, Planning Officer (DM), who can be contacted on Tel: 01527 534061 Email: sharon.williams@boromgoveandredditch.gov.uk for more information.

**Site Description**  
Site comprises of an existing 2 storey building that has been used as office accommodation. The application site is within an area designated for Primary Employment Uses in the Borough of Redditch Local Plan No. 3 and the emerging Local Plan No. 4.

To the front and side of the site are the mill buildings 'British Mills' that are grade II listed. The buildings concerned are a mix of uses such as Class B1, B8 use as well as residential. To the rear of the site is Copsey House which is currently occupied by NEW College and used for educational purposes.

**Proposal Description**  
It is proposed to change the use of the building to a 2 bedroom dwelling. The only external alterations would be changing the front door from a glazed door to a solid one. Other works for the change of use would be internal and include stud walls to subdivide the first floor into two bedrooms.

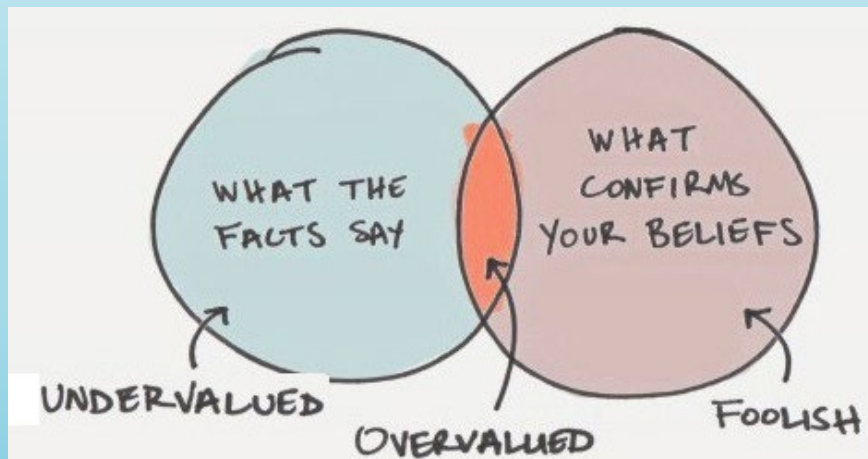
**Relevant Policies**  
Borough of Redditch Local Plan No.3:  
EEMPD3 Primary Employment Areas  
EEMPD4 Development Allocated Primary Employment Areas  
BSC13 Quality of Good Design  
CS07 The Sustainable Location of Development

Emerging Borough of Redditch Local Plan No. 4  
Policy 24: Development within Primary Employment Areas  
Policy 36: Historic Environment  
Policy 39: Built Environment



# Avoiding unreasonableness

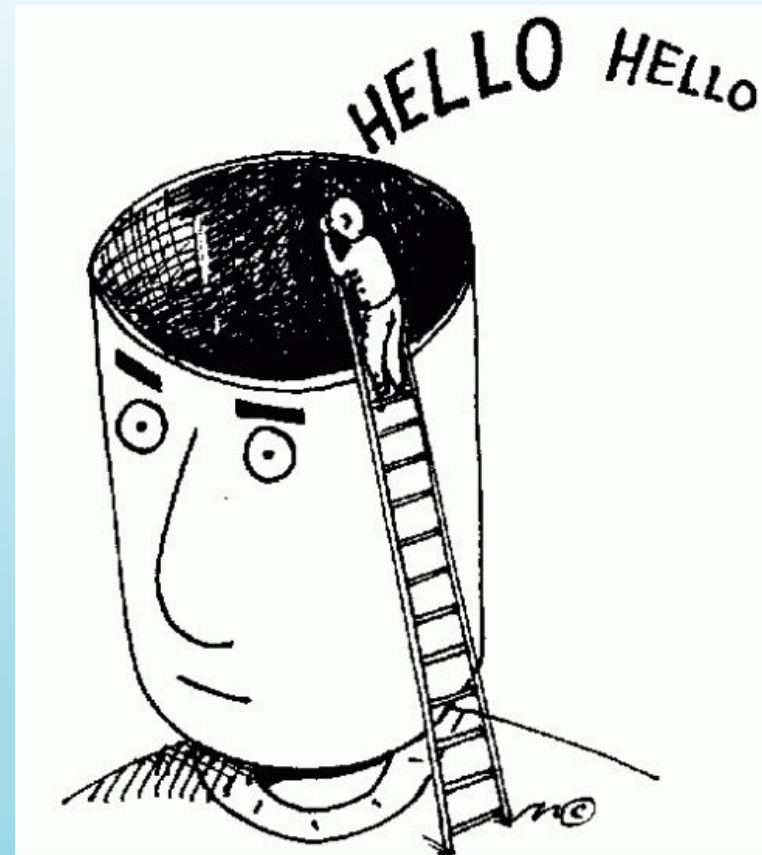
- Lack of bias and personal taste
- Precedents from appeal decisions after detailed examination of evidence
- Precedents from Council decisions - consistency
- Like a jury; evidence, material considerations





# Committee application and determination

Come to committee with an *open* mind, not an *empty* mind



# The Committee Decision

- You are not expected to be experts
- You are expected to listen to the experts...
- ... and apply judgement
- accept the recommendation or...
- ... explain your 'rebalancing'
- Report & minutes = transparent audit

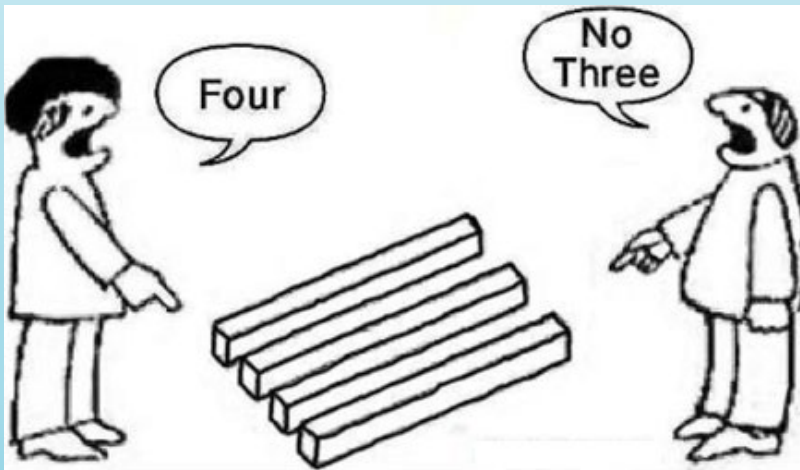


# Making a planning decisions : key points

- start with the policies in the development plan
- consider any other relevant policy context, if necessary
- take into account the assessment of your officers
- take into account all other views – if material
- look at the application on its own merits, and in its particular context
- come to your view in the light of the officers' assessment and recommendation

# Overturns/different decisions

- You CAN make a different decision to officers
- But it MUST be justified on planning grounds
- Committee must give justified planning reasons
- May be subject to appeal (or other challenge)



# Approval

- Is it clear why you approved the application?
- For a development to be acceptable -
  - Conditions
  - Planning Obligations s106
- Is it clear why you asked for an additional condition?
- Conditions (& s106) may be subject to appeal (or other challenge), so must be defensible.

# Reasons for refusal

- Must be:
  - ✓ Accurate
  - ✓ Directly related to the development proposal
  - ✓ Have regard to the development plan
  - ✓ Relate to material considerations

You can always ask officers for advice

# Considering Refusal - Ask yourself.....

- What is the “**evidential basis**” for the decision?
- Is it clear **why** permission is refused/approved?
- Can you describe the **harm**...
- ... and why conditions would not be sufficient ?
- Is it clear what the **policy support** is for the decision?
- Have **other material considerations** been given the appropriate weight?



# Listen to what officers are telling you

- Officers are there to help you make ‘sound’ decisions not force you to go with their recommendation
- Ask officers for their opinion *before* you vote
- Is the recommendation ‘finely balanced’ or ‘clearly in conformity with an adopted policy’?
- Officers are there to help you before – as well as during the meeting





# Managing meetings

- During the debate, where the committee has reached a different balance of material considerations (to the officer recommendation) officers should be asked to explain to the committee before a motion is made:
  - Which issues raised by the members/public can be given weight and why others cannot
  - What conditions/reasons are likely to be found reasonable if challenged
  - However, as these are public sessions it is better for Members to seek advice before the meeting

# Summary: reasonableness and balancing material considerations



- Decisions on behalf of whole community
- Consistency expected - precedents
- Presumption in favour of sustainable development
- Officer reports set out material considerations and recommendation but what if your balance is different to the recommendation?
- Ask Questions and take advice and discuss concerns potential reasons / conditions in advance of the meeting

# The decision can be challenged

- Appeal; Secretary of State, PINS
- Costs for unreasonable behaviour
- Judicial Review and Ombudsman



Local Government &  
Social Care  
**OMBUDSMAN**

# Appeal costs

## Costs Decision

Inquiry opened on 1 March 2022  
Site visit made on 4 March 2022

by **David Prentis BA BPI MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government  
Decision date: 30<sup>th</sup> March 2022

### Costs application in relation to Appeal Ref: APP/Q5300/W/21/32 Car park adjacent to Arnos Grove Station, Bowes Road, Southgate London N11 1AN

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Connected Living London (Arnos Grove) Limited for erection of 4 No buildings between one to seven storeys above ground level and flexible use ground floor units (Class A1/A3/A4) together with areas of hard and soft landscaping, access and servicing arrangements, plant and works.

#### Decision

- The application for an award of costs is allowed in the terms set out in the decision.

#### The submissions for Connected Living London (Arnos Grove) Limited

- National Planning Practice Guidance (the Guidance) provides the date advice in relation to cost applications. The aim of the costs encourage all those involved in the appeal process to behave in way. In particular, the Guidance aims to:  
"encourage local planning authorities to properly exercise their management responsibilities, to rely only on reasons for refusal to scrutiny on the planning merits of the case, not to add to the delay..."

- The Guidance includes examples of unreasonable behaviour by authority in relation to the substance of an appeal. The appellants' following examples:

- preventing or delaying development which should be permitted, having regard to its accordance with the national policy and any other material considerations;
- failure to produce evidence to substantiate each reason for refusal of an appeal; and

<https://www.gov.uk/planning-inspectorate>

## Costs Decisions

Inquiry Held on 14-15 May 2019  
Site visit made on 15 May 2019

by **David Reed BSc DipTP DMS MRTPI**  
an Inspector appointed by the Secretary of State for Housing, Communities and Local Government  
Decision date: 25<sup>th</sup> June 2019

### Costs application in relation to Appeal A Ref: APP/M3645/W/18/3198090 17 Copthorne Road, Felbridge, East Grinstead RH19 2NR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Andy Morehen, Abbey Developments Ltd for a full award of costs against Tandrige District Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for an access road from Copthorne Road to serve permitted residential development within Mid Sussex District.

### Costs application in relation to Appeal B Ref: APP/M3645/W/18/3205537 15 and 39 Crawley Down Road, Felbridge, East Grinstead RH19 2PP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wates Developments Ltd for a full award of costs against Tandrige District Council.
- The inquiry was in connection with an appeal against the refusal of outline planning permission for the demolition of the existing buildings at Nos 15 and 39 Crawley Down Road and the erection of 63 dwellings with associated new access.

#### Decision

- Both applications for a full award of costs are allowed in the terms set out below.

#### The submissions for the two appellants

- The applications of both Abbey Developments Ltd (Appeal A) and Wates Developments Ltd (Appeal B) were made verbally at the inquiry but written copies of these applications were also provided.

#### The response by Tandrige District Council

- The response of Tandrige District Council to both applications was made verbally at the inquiry but a written copy of the response was also provided.

#### Reasons

- Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

<https://www.gov.uk/planning-inspectorate>

## Costs Decision

Inquiry held on 3, 4, 5 and 10 August 2021  
Site visits made on 13 July and 12 August 2021

by **Peter Rose BA MRTPI DMS MCM1**  
an Inspector appointed by the Secretary of State  
Decision date: 28<sup>th</sup> September 2021

### Costs application in relation to Appeal Ref: APP/X1925/W/21/3273701 Land south of Heath Lane, Codicote SG4 8YL

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Ashill Land Ltd for a partial award of costs against North Hertfordshire District Council.
- The application is made with an appeal against a decision to refuse planning permission for 167 dwellings (Use Class C3) and associated works including formal open space, internal road network, landscape enhancement and creation of accesses from Heath Lane and St Albans Road; and the demolition of 66 St Albans Road.

#### Decision

- The application for a partial award of costs is allowed.

#### The submissions for Ashill Land Ltd

- It is submitted that the Council behaved unreasonably with respect to its second reason for refusal by failing to provide evidence to substantiate that objection.
- The evidence relied upon consists of no more than a general assertion that public confidence would be undermined in the process because people do not like the proposal. The evidence has not grappled with the clear, reasoned advice from Officers nor provided support that the emerging local plan (the ELP) would be undermined.

#### The response by North Hertfordshire District Council

- The Planning Practice Guidance (the Guidance) is clear that costs may only be awarded where a party has behaved unreasonably and that conduct has directly caused another party to incur unnecessary or wasted expense in the appeal process.<sup>1</sup>
- The application should be dismissed for the simple reason that, even if, as the appellant contends, the Council had behaved unreasonably with respect to the substance of its second reason for refusal, the appellant has not incurred unnecessary or wasted expense in the appeal process as a result of any such conduct on the authority's part.

<sup>1</sup> Paragraph 30: Reference ID: 16-030-20140306

<https://www.gov.uk/planning-inspectorate>

# Take away tips

- Follow codes of conduct
- Start with the development plan
- Take everything **relevant** into account
- Seek advice from officers (planning and legal)
- Carefully consider the evidence that might be needed to defend a decision at appeal

# Take away tips ...

- Reach a decision that a reasonable decision maker, properly directed, could have reached
- If you refuse, make sure you have sound planning reasons which are reasonable
- Visit the results of your decisions - to improve quality and consistency of decision making

# Questions ?



# LGA – Probity in planning

- [https://www.local.gov.uk/sites/default/files/documents/34.2\\_Probity\\_in\\_Planning\\_04.pdf](https://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf)



# Questions ?





Gilian Macinnes-



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# Probity in planning

Advice for councillors  
and officers making  
planning decisions

This advice was first published in 1992. This version has been prepared by CITIESMODE Planning. It updates and expands the April 2013 document prepared by Trevor Roberts Associates for the Planning Advisory Service.

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# 1. Introduction

## Background

Probity in planning is about ensuring that decisions on plan making and planning applications are undertaken, on behalf of communities, in a fair, impartial and transparent way. This guide has been written for officers and councillors involved in making planning decisions in their local authority. It is informed by contributions from councillors and officers and includes:

- a brief overview of the planning system and the role of decision makers
- councillor and officer conduct
- registration and disclosure of interests
- predisposition, predetermination or bias
- lobbying of and by councillors
- discussions before a decision is taken
- officer reports
- public speaking at planning committees
- decisions which differ from an officer's recommendation
- committee site visits
- reviewing past planning decisions and the outcomes
- complaints and record keeping.

Councillors and officers should be familiar with, and adhere to, their own local authority codes of conduct and guidance. This advice is not intended to be prescriptive. Local circumstances may necessitate local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

The Local Government Association (LGA) endorses the good practice of many councils who ensure their councillors receive training on planning when first appointed to the planning committee or local plan steering group. It is recommended that councillors receive regular ongoing training on probity in decision making and the local code of conduct as well as on planning matters. The Planning Advisory Service (PAS) can provide training to councillors.<sup>1</sup>

**“To new committee members... Get as much training as you can, and not just the standard ‘in house’ two hour session with your own planning officers – but also from other bodies like PAS, Urban Design London<sup>2</sup> and the Royal Town Planning Institute (RTPI), and look at how colleagues in other authorities do things.”**

**Councillor Sue Vincent, Camden**

This guide does not constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity. Where there are any doubts or queries, advice should always be sought from the council's monitoring officer.

<sup>1</sup> [contact\\_pas@local.gov.uk](mailto:contact_pas@local.gov.uk)

<sup>2</sup> [www.urbandesignlondon.com/library/sourcebooks/councillors-companion-design-planning-2018](http://www.urbandesignlondon.com/library/sourcebooks/councillors-companion-design-planning-2018)

# 2. The planning system and the role of decision makers

The National Planning Policy Framework 2019 (NPPF)<sup>3</sup> states that the purpose of the ‘planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.’ Planning has a positive and proactive role to play at the heart of local government and local communities. It can:

- help councils stimulate growth and translate goals into action
- balance social, economic and environmental needs to achieve sustainable development
- deliver important public benefits such as new housing, infrastructure and local employment opportunities.

“Everything starts with planning! The way our neighbourhoods develop to meet the challenges of a growing population is determined by the placemaking that is done through the planning policy process, which in turn informs the development management process. It is important for the planning committee members to give careful consideration to the impact that all applications will have on an area, as they will (hopefully) be in place for many

years to come.”

**Councillor Adele Morris, Southwark**

Planning law requires that applications for planning permission be determined in accordance with the development plan (the ‘local plan’ document(s) and if relevant spatial development strategy), unless ‘material considerations’ indicate otherwise. National planning practice guidance<sup>4</sup> (NPPG) explains that a material planning consideration is one which is relevant to making a planning decision to grant or refuse an application for planning permission. It states that the ‘scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration.’<sup>5</sup> However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.’

Local planning authorities are tasked with both preparing the development plan that applications will be assessed against and making planning decisions. In England the NPPF must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect other relevant international obligations and statutory requirements. Local planning decisions are made in this wider national and international context.

<sup>3</sup> [www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2)

<sup>4</sup> [www.gov.uk/government/collections/planning-practice-guidance](http://www.gov.uk/government/collections/planning-practice-guidance)

<sup>5</sup> However, for a recent judicial interrogation of material consideration, see the recent case of R (Wright) v Resilient Energy Severdale Ltd and Forest of Dean District Council [2019] UKSC 53

The determination of a planning application is a formal administrative process involving:

- the application of national and local planning policies
- reference to legislation, case law and rules of procedure
- rights of appeal and an expectation that local planning authority will act transparently, reasonably and fairly.

Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Planning affects people's lives and 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. Whilst councillors must take account of these views, they should not favour any person, company, group or locality, or appear to be doing so. Decisions need to be taken in the wider public interest on what can be controversial proposals.

Because planning decisions can be controversial, it is particularly important that the process is open and transparent. The risk of controversy and conflict is heightened by a system which invites public opinion before taking decisions. The legal and procedural nature of the planning system means there is a risk of complaints to the Ombudsman for maladministration or a breach of the authority's code. There may also be a legal challenge, in the form of a judicial review in which a judge reviews the lawfulness of a decision or action made by a public body.

Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.

Officers prepare the development plan (the local plan document or documents) which must conform to the policies set out in the NPPF and be adopted by a meeting of the full council. Applications for planning permission submitted to the local planning authority are assessed by planning officers who will, based on the development plan and any material planning considerations, make recommendations to planning committees who then resolve to grant or refuse the application. Councillors can be involved in decisions on planning enforcement action or compulsory purchase orders.

Most councils also delegate powers to senior officers to determine a large proportion of planning applications – the advice in this document and the council's code of conduct as it relates to planning decisions will apply to these officers too. The applications that go to committee, or are determined by an officer, will be set out in the local authority's scheme of delegation. Effective delegation can help ensure that decisions on planning applications that raise no significant planning issues are made quickly, and that resources are appropriately concentrated on the applications of greatest significance to the local area. These will typically be larger or more complex applications and potentially controversial – and are defined locally through authority schemes of delegation.

Therefore, whilst councillors are ultimately responsible for decision making in local planning authorities, officers who have delegated authority to make decisions need to be aware of the issues covered in this document – and the advice and principles discussed apply to them too.



# 3. Councillor and officer conduct

The seven principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019.<sup>6</sup> These principles are:

- **Selflessness:** holders of public office should act solely in terms of the public interest.
- **Integrity:** holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity:** holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** holders of public office should act and take decisions in an open and transparent manner. Information should not

be withheld from the public unless there are clear and lawful reasons for so doing.

- **Honesty:** holders of public office should be truthful.
- **Leadership:** holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Section 27 of the Localism Act 2011 (as amended)<sup>7</sup> requires local planning authorities to promote and maintain high standards of conduct and adopt a local code of conduct, which should reflect these principles. It must cover:

- the registration of pecuniary interests (explained in Section 4)
- the role of an 'independent person' to investigate alleged breaches
- sanctions, to be imposed on any councillors who breach the code.

Parish and town councils are covered by the requirements to have a code of conduct and to register interests. They can choose to 'opt in' to the code of conduct adopted by their principal authority (the local district or unitary council).

The Local Government Ethical Standards Report published in 2019 suggests that many codes of conduct fail to adequately address important areas of behaviour, such as social media use and bullying and harassment.

<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

<sup>7</sup> [www.gov.uk/government/collections/planning-practice-guidance](http://www.gov.uk/government/collections/planning-practice-guidance)

It includes a number of recommendations for codes of conduct – some of which will require changes to primary or secondary legislation. It also includes a series of best practice recommendations, which they recommend are addressed in codes.

Many local planning authorities have also adopted their own codes relating specifically to planning, which should be read alongside the substantive code of conduct for the council. In addition to these codes, a council's standing orders also set down rules which govern the conduct of council business.

Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct,<sup>8</sup> breaches of which may be subject to disciplinary action by the Institute. The RTPI provides advice for planning professionals on matters of probity aimed at supporting planners in exercising their independent professional judgement, and promoting public confidence in the planning system.

Officers and serving 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 them.

In addition, officers must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 (as amended)<sup>9</sup> enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

Care needs to be taken in the use of social media, such as Twitter, Facebook or Instagram, by officers and councillors, where it relates to decision making functions (see Section 5 on predetermination and bias). The Local Government Ethical Standards Report 2019 also addresses issues related to social media use.

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8 [www.rtpi.org.uk/media/1736907/rtpi\\_code\\_of\\_professional\\_conduct\\_-\\_feb\\_2016.pdf](http://www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf)

9 [www.legislation.gov.uk/ukpga/1989/42/contents](http://www.legislation.gov.uk/ukpga/1989/42/contents)

# 4. Registration and disclosure of interests

## Pecuniary interests

Decision makers must make known any pecuniary interests – that is any business or wider financial interests – and other personal interests their code requires them to disclose.

Councillors must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must also be registered with the monitoring officer within 28 days of the councillor becoming aware of them.

Each council's code of conduct should establish what interests need to be disclosed. The council's monitoring officer should maintain a register of these disclosable interests, which should be made available to the public. Councillors should also disclose any interest orally at a committee meeting if it relates to an item under discussion.

Chapter 7 of the Localism Act 2011 (as amended)<sup>10</sup> places explicit requirements on councillors to register and disclose their pecuniary interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.<sup>11</sup> It is a criminal offence to:

- Fail to register a disclosable pecuniary interest within 28 days of election or co-option
- Give false or misleading information on registration
- Participate in discussion or vote in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest.

<sup>10</sup> [www.legislation.gov.uk/all?title=Localism%20Act](http://www.legislation.gov.uk/all?title=Localism%20Act)

<sup>11</sup> [www.legislation.gov.uk/uksi/2012/1464/made](http://www.legislation.gov.uk/uksi/2012/1464/made)

## Personal Interests

The Localism Act also includes the need to register and disclose personal interests with other councillors, officers, and the public.

A councillor with a disclosable pecuniary interest relating to an item under discussion must withdraw from the committee (or other decision forum) and not participate in discussions and debate, nor vote. This applies to all planning decisions and not just on individual planning applications. For example, a development plan document might cover sites or property where a councillor has an interest in the land. Officers involved in making recommendations and decisions should adopt the same approach, and seek advice from the authority's monitoring officer.

If a councillor has a non-pecuniary personal interest, including being a member of an outside body, they should disclose that interest, but then may still speak and vote on that particular item. However, the Local Government Ethical Standards Report (2019) highlights the potential for conflicts and potential need to withdraw from committee in relation to non-pecuniary interests as well.

## Dispensation and handling relevant interests

In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business. A dispensation may be granted for any reason, but the Act specifies a number of scenarios where this might apply.

This includes the number of councillors having an interest being so great that the meeting cannot proceed, with the political balance of the meeting being substantially affected.

It is always best to identify a potential interest in a planning decision early on and raise this with the monitoring officer as soon as possible. Advice should always be sought from the council's monitoring officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

Appendix 1 on page 25 includes a flowchart of how councillors' interests should be handled. For comprehensive guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013.<sup>12</sup>

The provisions of the Localism Act 2011 (as amended) seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate or not.

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<sup>12</sup> [www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors](http://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors)

# 5. Predisposition, predetermination or bias

## Predetermination

Members of a planning committee, local plan steering group or full council (when the local plan is being considered) need to avoid any appearance of bias or having 'predetermined' views when making a decision on a planning application or policy.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a 'closed mind' approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.

## Predisposition

Predisposition is where a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. Section 25 of the Localism Act 2011 (as amended) clarifies that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicates what view they might take in relation to any particular matter.

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. For example, a councillor who says or 'tweets' from their Twitter account: 'Wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before the committee' will be perceived very differently from a councillor who states: 'Many people

find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area'.

## Impartiality and avoiding bias

Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision making process must be seen to be fair and impartial from the perspective of an external observer.

If a decision maker has predetermined their position, they should withdraw from being a member of the decision making body for that matter. This applies to any member of the planning committee who wants to speak for or against a proposal as a campaigner (for example on a proposal within their ward).

Local planning authorities will usually have a cabinet or executive member responsible for development and planning (sometimes known as the portfolio holder). PAS advise that the leader and portfolio holder of a local authority, who play an important role driving planning policies and proposals, should normally exclude themselves from decision making committees. This is to avoid the perception of a conflict of interests and predisposition.

In smaller councils it may be necessary for a portfolio holder to be on a planning committee. PAS suggest that in these situations they will need to be extremely careful and will need to withdraw when the committee is considering the council's own schemes or other applications that they have been seen to support previously.

# 6. Development proposals

Planning applications or proposals for changes to a local plan submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local guidance should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration
- a system should be devised to identify and manage such proposals and ensure probity in decision making
- the council's monitoring officer should be informed of such proposals.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as an applicant, should also not seek to improperly influence the decision.

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

# 7. Lobbying of and by councillors

## Reporting on local concerns

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.

As the Nolan Committee's 1997 report<sup>13</sup> states: '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'.

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

## Expressing opinions

As noted earlier in this guidance note, the common law permits predisposition. However it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all the application materials and arguments for and against the development proposal.

In such situations, a councillor could restrict themselves to giving advice about the process and what can and can't be taken into account. 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 they have heard all the relevant arguments, and have taken into account all relevant material and planning considerations at committee.

## Conduct at committee

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision making committee, they would be well advised to withdraw from the meeting once any public or ward member speaking opportunities have been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority's code of conduct for planning matters.

It is very difficult to convey every nuance of these situations and get the balance right between the duty to be an active local representative, and the need 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. Again, where there are concerns, advice should immediately be sought from the local authority's Monitoring Officer.

<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336864/3rdInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336864/3rdInquiryReport.pdf)

## Local codes

A local code on planning should also address the following more specific issues about lobbying:

- 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
- planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors
- 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.

Call-in procedures, whereby councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern. As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

## Gifts and hospitality

Councillors and officers should be cautious about accepting gifts and hospitality in general and especially where offered by lobbyists. It is not enough to register such gifts. Any councillor or officer receiving offers over an agreed value should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined. Councillors and officers involved in planning decisions should not accept over-frequent or over-generous hospitality, especially where from the same organisation. They should always ensure that acceptance of such hospitality does not constitute a conflict of interest. Guidance on these issues should be included in the local code of conduct, and the Local Government Ethical Standards Report suggests adherence to consideration be given to the purpose of the hospitality, proportionality and the avoidance of any conflict of interest.



# 8. Discussions before a decision is taken

## Early engagement and pre-application discussions

Early councillor engagement is encouraged to ensure that proposals for sustainable development will lead to settlements that communities need. This guidance is intended to reinforce councillors' community engagement role whilst maintaining good standards of probity to minimise the risk of legal challenges. It is also important to encourage good decision-making that is transparent and upholds public confidence in the planning system. Ultimately, the public are a critical part of the planning process and the role of councillors provides democratic legitimacy for decisions.

Pre-application discussions between a potential applicant and a council can benefit both parties and are 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.

## Avoiding predetermination

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. The Localism Act 2011 (as amended) acknowledges 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.

There is a difference between being predisposed to the planning policies set out in the NPPF or adopted development plan principles such as delivering housing, sustainable transport or good design and expressing views on this – and being predetermined in relation to a specific case.

Some local planning authorities have, or encourage, public planning forums to explore major pre-application proposals, with the developer outlining their ideas and inviting speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although such discussions still need to avoid pre-determination.

Councillor involvement can help identify issues early on, help councillors lead on community issues, and help to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' at committee approach.

## Meetings and discussions before a decision

The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Discussions before a decision is taken should ensure:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are 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.
- Consistent advice is given by officers based upon the development plan and material planning considerations.
- That councillors avoid giving separate advice on the development plan or other material planning considerations, as they may not be aware of all the issues at an early stage. Councillors should not 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.
- A commitment is made that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. 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. 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.

Councillors also talk regularly to constituents to gauge their views on matters of local concern – which can include planning applications. The Nolan Committee acknowledged that keeping a register of these conversations would be impractical and unnecessary; however, local planning authorities should think about when discussions should be registered and notes written.

## Other approaches to early engagement

Local planning authorities have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers
- discussions to enable councillors to raise issues, identify items of interest and seek further information
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken).
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when local planning 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.

# 9. Officer reports

Officer reports are a critical part of the decision-making process. They can also be difficult to write, as officers have to grapple with complex and technical information such as viability and daylight and sunlight analysis along with matters such as any equalities impacts of the proposed development. Conclusions can be finely balanced, having exercised planning judgement as to the merits of a scheme.

Sometimes, the local planning authority will engage external consultants to interrogate the applicant's material on specialist areas of expertise, and advise the officer accordingly. The presentation of this information in the report is particularly important – along with the availability of any background papers. Whilst the Courts are generally reluctant to interfere in the exercise of planning judgement, officer reports can nonetheless be fertile ground for judicial review challenges. This is particularly so where there is a risk that the officer may have inadvertently misled the committee, therefore tainting the resulting decision.

Careful reviews of draft reports, which may involve consultation with the council's legal team, is always recommended. Similarly, appropriate interventions by the legal officer at the committee meeting itself might be needed in order to correct any misconceptions on specific issues.

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 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, where relevant, 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 failure to do so may constitute maladministration or give rise to a Judicial Review 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 Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990.
- Any oral updates or changes to the report should be recorded.

# 10. Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film and broadcast committee meetings. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the local planning authority in writing.

New documents should not be circulated to the committee as councillors may not be able to give proper consideration to the new information, and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. Late information might lead to a deferral. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

# 11. Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

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 non material considerations which might cause local controversy, will rarely satisfy the relevant tests.

Planning committees can, and do, make decisions which are different from the officer recommendation. Sometimes this will relate to conditions attached to the permission or planning obligations secured through a legal agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended).<sup>14</sup> A S106 legal agreement, or undertaking, includes obligations entered into by the developer, landowner and other relevant parties to mitigate the impacts of a development proposal.

Sometimes the committee's decision 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.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- If a councillor is concerned about an officer's recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken however to ensure that this does not lead to predetermination of a decision.
- 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 reasons tested and discussed.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 planning 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, which should be set in the context of the development plan or the NPPF. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome based on policies set out in the development plan and the NPPF, and chances of a successful award of costs against the local authority, should one be made.

<sup>14</sup> [www.legislation.gov.uk/ukpga/1990/8/contents](http://www.legislation.gov.uk/ukpga/1990/8/contents)

The decision is ultimately the committee's; however, it is imperative that the decision is made with regard to relevant planning considerations.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departures' from the development plan. 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.

The application may then have to be referred to the relevant secretary of state, and/or the Mayor, depending upon the type and scale of the development proposed (Section 77 of the Town and Country Planning Act 1990).<sup>15</sup> If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

The common law on giving a statement of reasons for decisions has developed significantly in the last few years. It is important that the report that supports planning decisions clearly shows how that decision has been reached – whether for the grant or refusal of permission.

Whilst a committee giving reasons for refusing an application might be common, it may also be sensible to give reasons for resolving to grant permission, and having those accurately captured in minutes of the meeting. This may be particularly so where there is an overturn of an officer recommendation and/or where the application is particularly controversial due to planning policy protections and/or weight of objections. Where the development is EIA development, there is, in any event, a separate statutory requirement to give reasons for the grant of permission.

It should always be remembered that the public have a stake in the planning process and are entitled to understand how decisions are reached.

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<sup>15</sup> [www.legislation.gov.uk/ukpga/1990/8/section/77](http://www.legislation.gov.uk/ukpga/1990/8/section/77)

# 12. Committee site visits

National standards and local codes also apply to site visits. Local planning authorities should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial. Officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply
- a record should be kept of the reasons why a site visit is called.

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
- the proposal is particularly contentious.

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. 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.

# 13. Reviewing past planning decisions and the outcomes

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development, ideally on an annual or more frequent basis. This should improve the quality and consistency of decision making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.



# 14. Complaints and record keeping

All local planning authorities should have a complaints procedure which may apply to all of its activities. Local planning authorities should also consider how planning related complaints will be handled, in relation to the code of conduct adopted by the authority.

So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

# List of references

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## **Royal Town Planning Institute Code of Professional Conduct**

[www.rtpi.org.uk/media/1736907/rtpi\\_code\\_of\\_professional\\_conduct\\_-\\_feb\\_2016.pdf](http://www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf)

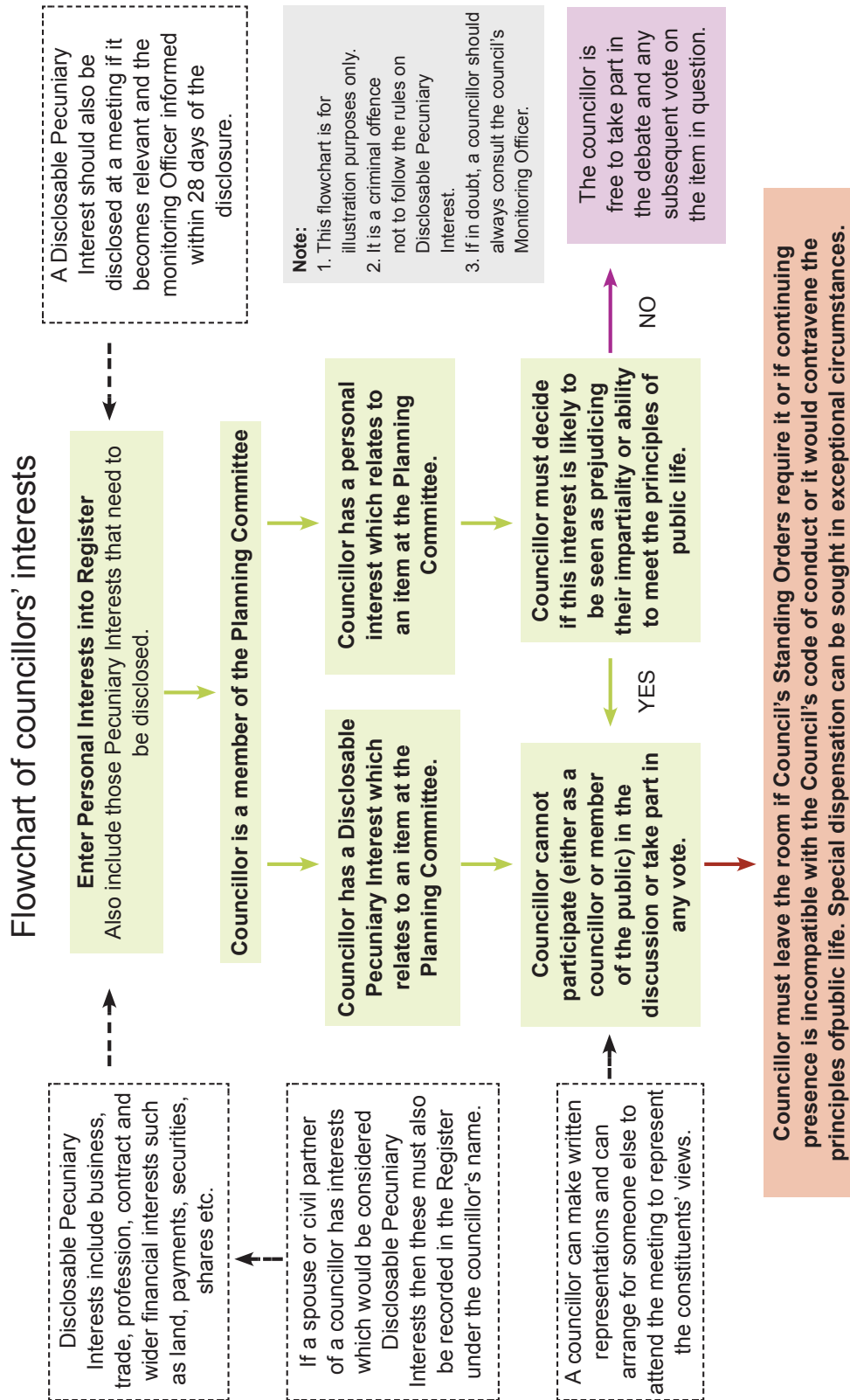
## **RTPI Guidance on Probity for Professional Planners**

[www.rtpi.org.uk/probity](http://www.rtpi.org.uk/probity)

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# Appendix 1 Flowchart of councillors' interests









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