



GUIDANCE FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS

A LOCAL CODE OF GOOD PRACTICE

OCTOBER 2002

HART DISTRICT COUNCIL

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Introduction

1. The Planning system involves taking decisions about the use and development of land in the wider public interest having regard, in particular, to the Development Plan. The system also includes the processes for preparation of the Development Plan itself and associated supplementary guidance and development briefs. Parties such as landowners, residents and businesses have an interest in all these processes. In their considerations Members and officers of the Council have to balance the requirements of the individual, whether the applicant or a neighbour, against the broader public interest.
2. It is fundamentally important that the planning system should not only be fair but should be seen to be fair. Accordingly, a number of bodies including the Local Government Association, the Audit Commission, and the Royal Town Planning Institute, have recommended that planning authorities should agree and adopt guidance for Members, officers and developers in the way the authority goes about its business.
3. This Guidance deals with the conduct of Members and officers and does not deal with planning processes or merits of planning issues. Procedures are dealt with as a separate document.

General Role and Conduct of Members

4. General matters relating to Code of Conduct at Meetings, including Members' interests are to be found in Standing Orders.
5. Members of the Council are accountable to the electorate and officers are accountable to the Council as a whole. Members must follow the Council's adopted general Code of Conduct for Members, and officers must comply with any statutory or other adopted Code of Conduct for Officers.
6. In addition, Members and officers must comply with all Standing Orders and Financial Regulations.
7. Members shall remember that the public's perception of the way we deal with planning applications is often formed as result of attending Committee meetings.
8. It is important to remember that Members and Officers should be seen to be working in partnership and that the Committee forum should not be seen as a confrontation between Officers and Members. Members are, of course, free to disagree with the officer advice but heed must be paid to issues raised earlier in the section on Members' conduct.
9. In making decisions on planning applications, remember that the law requires decision-makers to have regard to the Development Plan, so far as it is material to the application and to any other material consideration. Where the

Development Plan is material to the development proposal and must therefore be taken into account, Section 54A of the Town and Country Planning Act 1990 requires the application to be determined in accordance with the Plan, unless material considerations indicate otherwise. Appropriate consideration must also be given to the Crime and Disorder Act 1998 and the Human Rights Act 2000.

Role of Elected Members in Relation to Planning

10. Elected Members set the Council's planning policy, make policy decisions, and determine planning applications and planning enforcement issues within the context of that policy (except those delegated to officers). When Members come to make a decision on a planning matter, they must:
 - Act fairly and openly
 - Approach each application with an open mind
 - Carefully weigh up all relevant issues
 - Determine each application on its own merits, taking into account all material planning considerations
 - Ensure that there are clear and substantial reasons for their decisions, based on planning considerations, and that those are clearly stated.
11. Members should not favour any individuals or groups and although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Members cannot accept an instruction from anyone, including a political group, to determine an application or make other decisions in a particular way but must determine the application or matter on its planning merits, taking into account all material considerations. Such action could amount to maladministration.
12. Paragraphs 5 and 6 above apply to all Members dealing with planning matters, whether as a Cabinet Member, a Member of the Development Control Committee, an Overview Panel / Scrutiny Panel, in full Council, or other body of the authority.

Role of Officers

13. The function of officers is to advise and assist Members in matters of planning policy and in the determination of planning applications and enforcement issues by:
 - Providing impartial and professional advice
 - Making sure that all the information necessary for the decision to be made is given
 - Providing a clear and accurate analysis of the issues
 - Setting applications and enforcement issues against the broader Development Plan policies and other material considerations

- Giving a clear recommendation
 - Carrying out the decisions of Members of the Executive or the Planning Development Control Committee or other body of the Council
 - Exercising any powers delegated to them in accordance with the above principles and any conditions attached to the delegation.
14. Officers should comply with rules of conduct of professional bodies to which they are subject, including the Royal Town Planning Institute, and it is appropriate that officers who are not members of the Institute should work, so far as is possible, to its principles of conduct.
 15. The role of the Head of Environmental Services is to offer advice on an application including a recommendation based on his professional judgement. He is not there to "sell" or promote an applicant's proposal.

Disclosure of Interests

16. In dealing with any planning matter, including any proposed or actual application for planning permission Members must comply with provisions of the Code of Conduct for Members in relation to personal and prejudicial interests, disclosure of and participation in relation to such interests.
17. Members should ensure that they are consistent in disclosing interests covered by their Code of Conduct, whether at a meeting of a body of the Council that they attend, or at full Council.
18. The provisions of this Guidance apply equally to officers involved in planning matters and interests should be disclosed accordingly.
19. Members should already be aware of the Members Code of Conduct, which explains interests.

Gifts and Hospitality

20. Gifts and hospitality can give rise to particular problems in respect of the credibility of the planning process, and Members and officers should be aware of potential criminal offences under legislation relating to corruption. Members should have regard to the Code of Conduct for Members and also the Council's own Statement of Gifts and Hospitality. Members and officers should avoid any behaviour that might be taken as indicating that they are open to offers of gifts and hospitality. Officers should politely decline offers and where it is unavoidable should ensure that it is of the minimal level and declare its receipt as soon as possible (procedure note applies).

Lobbying

21. It is quite common for applicants or other interested parties to wish to discuss with Members or seek to influence Members (whether or not members of the Development Control Committee) before a planning application is determined.
22. Discussion can help Members' understanding of the issues and concerns associated with an application or planning matter. However, Members are under an obligation to determine matters on their merits. If they do express an

opinion, they should make it clear that they will only be in a position to make a final decision after having heard all the relevant evidence and arguments at Committee.

23. When being lobbied, all Councillors and Members of the Planning Development Control Committee in particular, should take care about expressing an opinion that may be taken as indicating that they have made up their mind on the issue before they have been exposed to all the evidence and arguments. If a Member responds to lobbying by deciding to go public in support of a particular outcome – or even campaigning actively for it – it will be very difficult for that Member to argue convincingly, when the Committee comes to take a decision on the application, that he or she has carefully weighed the arguments presented at the meeting. The proper course of action for such a Member would be to make an open declaration and not vote.
24. Members must not put undue pressure upon officers to make a particular recommendation in their report.
25. Members of the Development Control Committee must not organise support or opposition or lobby other Councillors to the extent that their impartiality may be called into question.
26. It is also common for applicants, objectors and other interested parties to seek to influence or lobby officers. Officers must avoid compromising or binding Members in relation to any issue. They will make it clear to any person seeking to lobby or influence that no commitment can be given and that they can give only personal and provisional views.

Pre-Application Discussions

27. Pre-application discussion and meetings between applicants and officers are encouraged. Officers will make it clear at the outset, and at the end of discussion, that the advice given is personal and provisional and will not bind the Council to a particular decision. (Procedure Note applies)
28. For Members, pre-application discussions with developers or potential applicants should be avoided unless such discussions are part of structured arrangements with officers. Contact should, in any case, only be made if it is considered to be beneficial and a written record of any discussion, in the absence of officers, should be sent to the Head of Environmental Services so that it may be placed on file. The same advice applies where a Member is contacted by a developer.
29. Social contact with known developers should be kept to a minimum and should be avoided when the latter are contemplating development (and the submission of a planning application) or when controversial decisions are likely to be needed.
30. Avoid commitment - even of giving that impression - when faced with lobbying by any person or group Concerned with a planning application. Indeed it would be prudent to explicitly state that no commitment may be given.
31. Officers follow a procedure on dealing with pre-applications and must take a consistent approach. Members should not require officers to take site visits

when this would be contrary to the procedure (i.e. not required or insufficient information submitted by the developer or other).

32. As stated above pre-application meetings should be avoided by Members. However in the exceptions where Members are involved:
- Where meetings are to involve Members, they will be arranged by and attended by officers and may include the Chairman of the Planning Development Control Committee or his/her representative
 - Potentially contentious meetings should normally be attended by at least two officers or a senior officer.
 - A note of the discussions made must be made and placed on file (officer's procedure note applies).
 - Officers to evaluate brown field sites in conjunction with the Urban Capacity Study
33. Site inspections can be useful to identify features of a proposal that may be difficult to convey in written report, but site inspections can cause delay and additional costs. Consequently site inspections and site meetings should only be used where expected benefit is substantial and justifiable.

Decisions Contrary to Officer Recommendation

34. As stated above the law requires that where the development plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise. From time to time, Members dealing with planning matters will disagree with the professional advice given by officers. In cases where there is a decision, for good and valid reason, not to follow officers' advice, those reasons should be recorded in the minutes of the meeting. Where it is not possible for Members to define the reasons with sufficient precision at the meeting, determination should be deferred/adjourned until officers have presented draft reasons for approval by Members.
35. The Head of Environmental Services is obliged, under his own Professional Code of Conduct, to give you his view. Nevertheless he will endeavour to help Members frame reasons where they decide to go against his recommendation. Members should consider discussing his or her concerns with the Head of Environmental services, or one of his team, before a meeting so that he or she is able to express planning reasons clearly when putting forward a motion to oppose the Head of Environmental Services recommendation.
36. The Head of Environmental Services, and his team, will normally represent the Council, at Appeal. In those cases where the Members go against his recommendation, however, he reserves the right to ask Members to conduct an appeal where he feels that he, and his team, are unable to positively support a decision. In these latter circumstances the Head of Environmental Services and his team will do all that can be done to help Members prepare a case. Consideration should also be given, in these cases, to the appointment of a Planning Consultant to take on the case

Applications by Members and Officers

37. Applications made by Members and officers should be notified to the Monitoring Officer and the Chief Development Control Officer. The Member or officer should take no part in the processing of the application.
38. Such applications will be determined by the relevant Committee and not by officers under delegated powers.
39. Serving Councillors who act as agents for people pursuing planning matters within their authority should play no part in the decision making process for those proposals. Such Councillors should not accept appointment to either the Development Control Committee or the Community and Environment PRP.
40. Members will wish to make planning applications and may wish to make representations on their own behalf where development is proposed and affects their property. In either case they cannot participate in the decision by reason of their prejudicial interest. They should not seek to promote their own interests in a manner that is not available to others and in particular they should not discuss the matter with other Councillors. The public speaking arrangements at Committee will not be used by Councillors save through their own representative.

Members Viewing Panel

41. Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial.
42. The Viewing Panel visit is not a formal committee and is not bound by Committee Rules. No decision or debate on the merits of the application must be taken on site. Factual advice only may be sought from officers. A Member or Officers shall ask for a site visit only where he/she is genuinely concerned that there is an issue on site, which can only be appreciated, by others, if they are taken to see it.
43. Applications submitted by a serving Councillor or officer or by an ex-Councillor or ex-officer, shall be treated in exactly the same way as any other application in this context.
44. No site inspection will normally take place on private land without the consent of the owner. If consent is not given, a site may be viewed from outside of it, provided that no obstruction or nuisance is caused. Members of the public and objectors, or other persons, will not be allowed to enter private land without the consent of the owner.

Review of decisions

45. An annual review of the broad range of planning application types (major, minor, permitted departures, upheld appeals, listed building works and enforcement cases) should be made. An evaluation of such should give rise to the need to reconsider policies or practices.

Complaints

46. Record keeping of complaints should be accurate and complete so that complaints may be fully investigated and learnt from.