

Development Management Protocol

1 Introduction

- 1.1 This Protocol sets out the practices and procedures that Members and Officers of Devon County Council should follow when determining planning applications.

2 Basic Principles

- 2.1 The basis of the planning system is to manage the development process in the public interest.
- 2.2 Planning is often contentious because planning decisions affect the private interests of individuals, landowners and developers. It is not a precise science and requires informed judgement within a firm policy context. The planning system relies on ensuring that officers and members act in a way which is not only fair, but also is clearly seen to be so. The planning process must therefore involve open and transparent decision making. The process should leave no grounds for suggesting with any justification that a decision has been partial, biased, or not in any way well founded.
- 2.3 Members have a duty to represent their constituents, but also an overriding duty to the wider community. Whilst Development Management Committee Members may be influenced by the opinions of others, their decisions must not discriminate in favour of any individual, group, company or locality, nor appear to do so. Decisions should be clearly based upon material planning considerations.
- 2.4 The role of the planning officer is to advise and assist members in their determination of planning applications by providing impartial and professional advice. They will ensure that all the necessary information for a decision to be made is provided together with a clear and accurate analysis of the issues including identifying relevant development plan policies and all other material considerations. All reports to Members will contain a clear recommendation.
- 2.5 Members may raise with the relevant officers any points that they consider to be of relevance to the merits of a planning matter that the County Council is to determine. However, Members should not otherwise seek to influence officers regarding particular officer recommendations.
- 2.6 Planning applications submitted by the County Council for its own development will be treated in the same way as those submitted by private developers, both in terms of procedures and the assessment of material planning considerations.

3. Pre-application discussions

- 3.1 Pre-application discussions between potential applicants and a Development Management Officer can be of considerable benefit to both parties and should be encouraged. Such discussions will help to clarify what information should accompany the application and will usually reduce the time taken to make a decision.
- 3.2 It should always be made clear at the outset that the discussions will not bind the officer to make a particular recommendation, or the Council to make a particular decision and that any views expressed are personal and provisional. Advice should be consistent and based on the development plan and material considerations.

- 3.3 A written note should be kept of potentially contentious meetings.
- 3.4 Members of the Development Management Committee need to preserve their role as impartial decision makers and generally should not give pre-application advice to applicants and/or agents regarding development proposals.
- (a) Members should discourage applicants from approaching them regarding planning applications.
- (b) Members should only meet applicants if an officer is present. A note should be taken of the meeting. The taking place of the meeting should be reported to the Committee.
- (c) Members should minimise social contacts with known developers and refrain from such contact when developments are contemplated or proposed.
- (d) If an applicant makes an approach or interested party, members should agree to listen but are advised not to comment. If a comment is given, it should be made clear that it is a personal view rather than that of the authority. Members should avoid giving any commitment, or the impression of a commitment, that they hold any particular view on the proposed development. Exceptionally, where a member considers that he or she cannot avoid giving an opinion, this should be declared at Committee. If the approach is from a constituent, members may give information on policies and procedures. Requests for information from professional advisors or agents should be referred to officers.

4. Lobbying

- 4.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a proposal will often seek to influence the decision by an approach to their local Member or to Members of the Development Management Committee. However, such lobbying can lead to the impartiality and integrity of a member being called into question. The information provided by lobbyists may represent a selective and incomplete picture of the relevant considerations in respect of a planning matter.
- 4.2 Development Management Committee Members are free to listen to any point of view about a planning proposal. Even though they may agree with a particular view, Members of the Committee should avoid expressing an opinion which may indicate they or the authority have reached a final conclusion on a planning application until all the relevant information, evidence and arguments have been put before them at Committee.
- 4.3 Local Members who are also members of the Development Management Committee may participate in the Committee debate on an application in their division and will normally be able to vote on the application. Whilst local members may wish to ensure that a particular body of local opinion is heard by the Committee, and may reflect those views to the Committee, they should take care to avoid bias. Members of the Development Management Committee need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in a transparently open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. A member may voice his or her concerns publicly before a meeting but he or she should make it clear that they will not form a final opinion until they have considered all the information.
- 4.4 If the member responds to lobbying by deciding to go public in support of a particular outcome; or even campaign actively for it; it will be very difficult for that member to

argue convincingly that he/she has carefully weighed all the evidence and arguments presented at the committee meeting: In these circumstances the decision of the Development Management Committee may be vulnerable to challenge by way of Judicial Review if there is bias or the appearance of bias in the process. An appearance of bias is created if Members make it plain that they have already made up their minds about an application and will not be influenced by anything said at the meeting. In these circumstances the proper course of action would be for the member to make an open declaration and not to vote, even though that would not amount to a prejudicial interest as defined by the County Council's Constitution.

- 4.5 Being a Member of a District, Parish or Town Council that has expressed a view on an application does not prevent a Development Management Committee Member reaching the same or a different view when the application is considered on its merits by the County Council. However the Member should approach the decision making process afresh and not express a final view in advance of the Committee meeting or act as a mere mouthpiece for another Authority. To do so could give an appearance of bias.
- 4.6 Members should be aware of, and have regard to, guidance issued from time to time by the Standards Board for England in relation to this issue

5. Site Visits

- 5.1 Members site visits shall only be held where the proposals are of such a nature where the Committee is confident that the value added by such a visit justifies the delay in the processing of the planning application.
- 5.2 Attendance at site visits is generally by invitation only – the prime purpose being for the County Council members themselves to fully understand the material planning considerations to be taken into account in determining the planning application. Additional representation shall be at the discretion of the Chairman of the Site Visiting Committee.
- 5.3 The Site Visiting Committee shall normally comprise the Chairman and a limited number of members of the Committee, with full Committee Site Visits being exceptional and restricted to the most contentious cases only. The local County Councillor representing the Division will be invited to attend in all cases and the Site Visiting Committee will normally be accompanied by an officer from the County Council's Planning, Transportation & Environment Service. Representatives from the applicant/landowner; District Council; Parish Council; Statutory Consultees (where appropriate) and Objectors/Supporters (where appropriate) should be invited to attend and normally be notified at least 7 days before the Site Visit is due to take place.
- 5.4 The sequence of events at the site Visit should normally be as follows:-
 - (a) A visit to the site by the County Council Members and officers only – to enable a description of the site and its surrounds and relevant geographical information regarding the proposal to be presented. (Exceptionally at the discretion of the Chairman, the applicant may be asked to attend this part of the visit for site safety reasons and/or to point out physical aspects.)
 - (b) The Site Meeting – at which the County Councillor and Officer(s) together with invitees (including the applicants) are able to present their views. Representatives of objectors/supporters would be entitled to request attendance in advance (with an invitation to address the site meeting at the discretion of the Chairman). In particular contentious cases or cases where the full Development Management Committee are in attendance, it may be necessary to make arrangements for the site meeting to be held in a local hall.

- (c) At the conclusion of the Site Meeting, the County Council Members will retire to have a final discussion (with County Council Officers in attendance). Following that discussion the local ward County Council member will be asked to retire (unless he/she is a member of the Development Management Committee. If a recommendation is made the wording of such recommendation should be agreed with the Officer(s) present before the visit ends.
- 5.5 The above are guidelines. Circumstances will vary and some flexibility is necessary. Accordingly, the Chairman should always have discretion to modify the arrangements in each case as appropriate e.g. to vary the sequence of 5 (a) and 5 (b) or to combine them.
- 5.6 The assumption is that the awareness gained by visiting members will inform the subsequent Committee debate and be of benefit to all members. There is no embargo on members voting at a Development Management meeting if they have not personally attended a site visit. They can listen to those who have attended and then vote on any motion before the Committee.

6. Delegated Decisions

- 6.1 Delegation of appropriate powers and functions by Development Management Committee to designated officers has long been regarded as an essential element for the delivery of an efficient planning service.
- 6.2 The scheme of delegation last reviewed in March 2007 is set in Part 3 of the Constitution.

7. Committee Decisions

Committee Reports

- 7.1 Reports to Development Management Committee will normally be available at least five working days prior to the meeting.
- 7.2 All applications submitted to the committee will have a full written report from officers including a reasoned assessment of the proposal, reference to relevant policies and a justified recommendation and analysis of available options. Reports will cover the substance of any objectives and the views of people and bodies who have been consulted.
- 7.3 Any oral presentations raising new matters and updates by officers to the committee will be minuted.
- 7.4 Members should ensure that they are present for the whole presentation by officers and subsequent debate on a particular matter and do not attend part way through. This is to ensure that they are able to hear all the relevant evidence and debate in relation to a proposal. In the event that members are not present for the whole of that process and miss a substantial proportion of it they should consider whether they are in a position to vote.
- 7.5 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations that justify this must be clearly stated.
- 7.6 Where an application is recommended for refusal the reasons will be set out in full in the officers' report.

Decisions contrary to officer recommendation

- 7.7 Members must indicate reasons for approval or refusal of applications determined contrary to officer advice and these will be minuted in full. Where an application is

approved contrary to officer advice, the drafting of conditions will be delegated to the Head of Planning, Transportation & Environment in consultation with the Chairman.

- 7.8 Where an application is refused contrary to officer advice, reasons for refusal will be agreed at the committee meeting will be based on material planning considerations and recorded in the minutes. An opportunity should be given to the officer to explain the implications of the contrary decision. If a successful planning appeal follows a refusal contrary to officer advice, clear identification of good reasons for refusal will reduce the chance of a costs award.

Free from political instruction

- 7.9 Members of the committee must make planning decisions on planning grounds and decisions should not be taken in party groups on how to vote on particular applications prior to the committee meeting.

Declaration of interests

- 7.10 The Council's Code of Conduct sets out requirements and guidance for members on declaring personal and prejudicial interests and the consequences of having such an interest. These must be followed scrupulously and Members should review their situation regularly. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.

- 7.11 A Member with a prejudicial interest in respect of a particular planning matter must declare it and take no part in the determination of the proposal. He or she should leave the room before the item is decided. There are limited opportunities for a member with a prejudicial interest to speak to the item being debated. The responsibility for this rests with each Member. Advice can be obtained from the County Solicitor if required, in advance of a Committee meeting. It is unsatisfactory if a member asks for guidance in the course of a debate.

- 7.12. The Local Government Association publication "Probity in Planning" (revised May 2009) is a key document outlining how Members and Officers should approach this issue. Members should also be aware of, and have regard to, guidance issued from time to time by the Standards Board for England in relation to this issue

Requests by Members for information

- 7.13 Wherever possible, Members should give advance notice of additional information they intend to request, or information they intend to contest, at the committee meeting so that officers can be in a position to assist and avoid the unnecessary deferral of a decision.

Public Participation

- 7.14 In order to give greater opportunity to applicants and objectors to express their respective points of view, the Development Management Committee operates a scheme of public participation, details of which are set out at Part 4 of this Constitution.

8. Issue of Decisions

- 8.1 Where an application is approved or refused by Committee the planning permission or notice of refusal will normally be posted to the applicant within 10 working days of the date of the Committee Meeting.

8.2 Where an application is approved subject to a legal agreement, the decision notice will not be issued until the agreement has been completed.

9. Member Training

9.1 Members of the Development Management Committee will receive regular training in the planning system.

9.2 The Audit Commission's Report, 'Building in Quality', also recommends that elected Members should visit a sample of implemented planning permissions to assess the quality of decisions. This can improve the quality and consistency of decision-making and help reviews of planning policy. Visits to application sites, previously considered by the Development Management Committee, will be organised as appropriate.