

## **PART 8.5 PROTOCOL FOR MEMBERS REGARDING PLANNING APPLICATIONS**

### **1. Lobbying and neutrality**

- (a) Members of the Planning Committee should not organise the support of, or opposition to, planning applications.
- (b) No Member should lobby Members of the Planning Committee outside the formal procedures for objecting to or making representations on planning matters, as set out in this Protocol and the Protocol for Public Representations at Planning Committee.
- (c) Planning Committee Members should retain a neutral position on planning applications prior to determination at the Committee and, in order to retain the impression of being free from bias, should avoid making public statements as to their support of, or opposition to, any application.
- (d) Planning Committee Members should use a standard paragraph in letters to lobbyists etc explaining they will retain a neutral position on planning matters and applications until such time as the application is put to the Committee for determination. However, before doing so Members may wish to take advice from officers as to whether the application will be determined by the Committee or under delegated authority.

A suggested standard paragraph is as follows:

“As a Member of the Planning Committee I am unable to comment on planning application reference.....until such time as the application comes before the Committee for determination”

- (e) Ward Members not sitting on the Committee should be informed of applications in their ward.
- (f) Members not sitting on the Planning Committee may make public their personal view on any development issue and may take advice from the Executive Lead for Strategy, Governance & Law before commenting on any particular planning application. Where views are expressed it should be made clear that the merits of the application will be dealt with by the Committee at the determination stage in accordance with statutory criteria.
- (g) No Member should appear to be delivering planning outcomes to lobbyists, agents, third parties, objectors, etc. prior to a planning application being determined.
- (h) Members who have been lobbied or taken part in any discussions on an application, and then substituted onto the Committee, should declare this at the Committee. Members who have expressed a strong view on a particular application should seek advice from the Executive Lead for Strategy, Governance & Law prior to being substituted.

## Note

Planning Committee Members have to retain a “neutral” position on any application for the very fact that they are part of the decision making process and cannot be seen to side with either the applicant or objectors prior to the date of determination of the application when all relevant facts are known. As decision makers, they should not be seen to be prejudging the application, nor to be influenced by those with whom they have a special relationship as fellow Members, at any stage prior to determination. This would not therefore debar a local Member from speaking on an application at the determination stage but would prevent a Member from lobbying Members at any time leading up to determination.

The Planning Committee is constrained to take into account only relevant planning considerations, against the background of the Development Plan and other material planning considerations. Planning decisions should not be unduly influenced by party politics, or individual Members. Should Members be allowed to become involved in applications to the extent of organising support/objection the Council’s credibility in the decision making process could be compromised.

For example, therefore, Members should not distribute or organise the distribution of leaflets urging the public to support or oppose particular planning applications. However, Members could set up meetings to gain the public’s views on particular applications, but in so doing regard must be had to codes (c) and (f) above.

For further advice regard should be had to the Local Government Association’s publication: “*Probity in Planning*” which contains detailed guidance on good planning practice for Councillors and officers dealing with planning matters.

## 2. Declaration of Members’ Interests

- (a) All Members should be conversant with the Code of Conduct for Members.
- (b) Non-voting Planning Committee Members should leave the committee room during consideration of any application in which they have an interest which would amount to a disclosable pecuniary interest had they been voting Members of the Committee.

[Note: Members should be aware that officers are bound by the Code of Conduct for Employees and should declare financial and non – financial interests.]

### **3. Procedures and Conduct of Meetings**

#### **(a) Chair's Briefings**

- (i) Chair's briefings should be held after the draft agenda has been set and officers' recommendations made.
- (ii) The prime purposes of Chair's briefings should be:-
  - to discuss the issues with the Chair, Deputy Chair and Opposition Spokesperson;
  - to ensure that the rationale for officers' recommendations is fully explained;
  - for the Chair to highlight possible problem items and potentially controversial applications;
  - to consider arrangements for site visits;

#### **(b) Officer - Member Briefings**

- (i) Member briefings should be held after the draft agenda has been set and officers' recommendations made.
- (ii) The purpose of Member Briefings is to ensure that the rationale for officers' recommendations is fully explained
- (iii) Officer-Member briefings are to be fact finding exercises only.

#### **(c) Committee Meetings**

- (i) An opportunity will be given for members of the public to address the Committee. Those wishing to make representations must follow the Protocol for Public Representations at the Planning Committee.
- (ii) A representative of the Executive Lead for Strategy, Governance & Law should be present at all Committee meetings.
- (iii) Ward Members not sitting on the Committee, any ward Member of an adjoining ward or other ward which will be affected by the application, representatives of Rottingdean Parish Council (in relation to applications which affect the area of the Parish Council) and representatives of a neighbourhood forum designated under the provisions of the Localism Act 2011 (in relation to applications which affect the area of the neighbourhood forum) have the right to attend the Planning Committee and speak for a maximum of 3 minutes to any application within/affecting their ward or area.

#### **Note**

This includes the right of ward Members to speak on an application where they are Members of the Applicant Committee (see also note to Code 6(a)).

#### **4. Site Visits**

- (a) Site visits should follow established criteria. A copy of the criteria is attached as Appendix 1.
- (b) A Code of Conduct for site visits should be followed. A copy of the Code is attached as Appendix 2.
- (c) It is recommended that all Planning Committee Members should attend site visits.
- (d) Planning Committee Members with an interest in an application should not attend the site visit for that application.

#### **5. Decisions Contrary to Officer Recommendation**

- (a) Members must give tenable and substantiated reasons when refusing and approving planning applications.
- (b) Reasons for rejection and approval should be fully minuted.
- (c) A recorded and named vote should be taken where applications are rejected or approved against officer recommendations.
- (d) Officers must ensure that Members are fully aware of the reasons for their recommendation and the implications for the Committee of a decision against the recommendation – this would include the cost implications of any appeal.
- (e) Officers will ensure that any decision (including a decision that is contrary to officer recommendation) is appropriately supported.

#### **6. Planning Applications made by the Council**

- (a) There is no automatic prohibition on Members of the Planning Committee speaking and voting on planning applications made by Committees or Sub-Committees of which they are also Members. However, Members need to be mindful of the following:
  - there may be a potential public perception that, by being part of the application and determination process, Members may not retain a neutral and objective position;
  - Members must confine themselves to determining planning applications on the basis of material planning considerations only and not take into account non-planning considerations;
  - Members should not take part in the planning decision if their Membership of the Applicant Committee or Sub-Committee, or other circumstances, would lead to a charge of bias or predetermination.;
  - Members should consider each situation on its own merits and, if the position is unclear, err on the side of caution and not take part in the determination of the application;
  - If Members are unclear or need advice, they should consult the Executive Lead for Strategy, Governance & Law or the Planning Lawyer.

## **7. Relationship between Members and Planning Officers**

- (a) Planning officers who work closely with Members must ensure that their professional judgment is not compromised by the nature of their professional relationship with Members.
- (b) Members should recognise that Chartered Planners are governed by their code of professional conduct obliging RTPI members to make professional and independent recommendations.
- (c) Informal relationships between officers and Members should be avoided as this may create difficulties for chartered planners where there are genuine differences of approach to a planning matter.

### **Note**

Members need also to be familiar with the Code of Conduct for Member/Officer Relations found elsewhere in this part of the Constitution.

## **APPENDIX 1**

### **Criteria for Planning Committee Site Visits**

#### **1 The Purpose of Site Visits**

- 1.1 The purpose of a Site Visit is:-
- to enable Members of the Committee to obtain a fuller appreciation of the likely impact of proposed development, which may not be apparent from the officers' report and presentation or form a public vantage point outside the site, so as to inform better decision making in respect of that application;
  - to enable Members of the Committee to assess the impact of schemes that they have previously approved so as to inform decision making in the future (site visits to implemented schemes).
- 1.2 The purpose of a Site Visit is not:-
- to allow ward Councillors, applicants, objectors or other members of the public to lobby Members of the Committee, nor
  - to duplicate or check up on the site assessment made by the planning case officer.

#### **2. Protocol for calling for Site Visits**

- 2.1 Any Member of the Committee or Councillor is entitled to make a request for a site visit explaining how they consider their request meets the criteria set out above. It will be entirely at the discretion of the Committee to decide whether it wishes to carry out a site visit in that particular instance.
- 2.2 A request for a site visit may be made by a Member either at Planning Committee or at an Officer-Member Briefing. Officers may suggest or formally recommend that a site visit be made. A site visit will be held unless the majority of Members, present at the time when the request is considered, disagree. Should a site visit be agreed the planning application will be heard at, or deferred until, the next Planning Committee following the site visit.
- 2.3 Members will be encouraged to identify potential cases for Committee site visits at the earliest possible occasion so as to avoid unnecessary deferments.

## APPENDIX 2

### Site Visits by Planning Committee Code of Conduct

1. Authorised attendance at a site visit shall be limited to elected and co-opted Members of the Planning Committee, a representative of the Executive Director Economy, Environment and Culture and the applicant or his or her representative. Councillors representing the ward in which the application is submitted or adjacent wards affected by the application will also be invited to attend.
2. There shall be no discussion of the merits of any application during the site visit. Such discussions will only take place at a meeting of the Committee.
3. During the site visit Members should endeavour to remain in a group and must not enter into individual discussions with the applicant, the applicant's agent or any objector, supporter or ward Councillor.
4. The applicant, objectors, supporters and ward Councillors shall be treated equally during the site visit,
5. Neither the applicant, nor their representative nor any objector, supporter or ward Councillor shall be permitted to make representations to Members of the Committee during a site visit but they may, however, give any purely factual information which is required by Members and which cannot be ascertained by viewing alone.
- 6.. Site visits are normally arranged for the afternoon of the day immediately prior to the following Planning Committee. It is the responsibility of the case officer to:
  - (a) Notify the applicant/owner of the site that a visit is to take place and explain the procedure;
  - (b) Liaise with the Clerk to the Committee regarding the time and place of the visit so that a letter can be sent with the next agenda notifying Members of the visit.
  - (c) Ensure that the report is included on the next agenda.