



## COUNCIL OF THE ISLES OF SCILLY

---

# PLANNING PROTOCOL

**including**

- THE ROLE AND CONDUCT OF ELECTED MEMBERS AND OFFICERS**
- MEMBER TRAINING**
- COMMITTEE SITE VISITS**
- ANNUAL REVIEW**

## Introduction

- 1.1 The purpose of this Protocol is to establish the standard of conduct for both Members and Officers of the Council when dealing with planning matters. However, the standards set out in the Protocol should also apply to anyone outside of the Council who is co-opted onto the Planning and Development Committee or one of its sub committees. This Protocol is based on a guidance note issued by the Local Government Association concerning probity in planning. The purpose of the Protocol is to ensure that the planning process is characterised by open and transparent decision making.
- 1.2 This Protocol is additional to the Council's Local Code of Conduct established under the Local Government Act 2000 and which provides guidance and standards for Members. Guidance for Chartered Town Planners is set out in the Royal Town Planning Institute's Code of Professional Conduct.
- 1.3 The planning system involves making decisions about the use and development of land in the wider public interest. Planning law requires that all planning applications are determined in accordance with the Development Plan (or the Local Development Framework), unless material considerations indicate otherwise.
- 1.4 The Council's planning function is delegated to the Planning and Development Committee with some delegation given to the Chief Planning and Development Officer.

## Role and conduct of elected members and officers

- 2.1 Members and Officers have different, but complementary, roles in dealing with planning matters. Consequently, a successful relationship between Members and Officers has to be based upon mutual trust and respect and an understanding of each others' positions. The role of an elected Member on the Planning and Development Committee involves the balance of representing the needs and interests of individual constituents and the community, whilst maintaining the ethos of impartial decision making based on the policies and proposals of the Development Plan (or Local Development Framework) and material planning considerations.
- 2.2 In dealing with planning matters Members or Officers as appropriate will:
- 1 Declare any personal or prejudicial interest and take no part or a restricted part, as appropriate, in the processing and determination of the planning application or preparation of a planning policy or document (see further the section on Declaration and Registration of Interests at Section 4 below);
  - 2 Act impartially and honestly;

- 3 Approach each planning application or consideration of the preparation of a planning document with an open mind;
- 4 Take into account and carefully weigh up all relevant issues;
- 5 Determine each planning application on its own merits and in accordance with the requirements of Planning Law and the guidance of planning policy;
- 6 Avoid inappropriate contact with interested parties (see further the section on lobbying at Section 6 below);

3.1 The role of an Officer in advising and assisting elected Members of the Planning and Development Committee in their determination of planning applications is to ensure that all of the relevant issues and information is available to enable them to make a decision in accordance with the requirements of legislation. As such, Officers will provide:

- 1 Impartial and professional advice;
- 2 Consistency of interpretation of the planning policies;
- 3 Complete written reports which will include:
  - 4 A clear and accurate analysis of the issues in the context of the relevant development plan policies and all other material considerations;
  - 5 The substance of the representations, objection and views of all those who have been consulted;
  - 6 A clear written recommendation of action and where that recommendation is contrary to the Development Plan, the material considerations which justify the departure; and
  - 7 Any other information necessary for the decision to be made. (See also Section 8 below).

## Declaration and registration of interest

- 4.1 Members and Officers are obliged by the Council's Standing Orders and the National Code of Local Government Conduct to make known any personal or prejudicial interest in relation to any item under consideration at a meeting of the Council or any of its Committees. Depending on the precise nature of the interest, there may be a requirement not to participate in discussion and consideration of that item and to retire from the meeting room. The responsibility for such declarations rests with individuals. The Standards Board for England provide guidance for Members on such matters.
- 4.2 A Register of Members and Officers known and declared interests is kept by the Council and is available for inspection upon request. There will however, be instances where an interest could not have been anticipated prior to inclusion of an item on an agenda and which may not be contained in the Register. In such circumstances, the Member or Officer will have to identify the existence and nature of the interest and follow the procedure contained in Standing Orders and this Code of Practice. In certain circumstances, although a Member may not need to declare an interest, they may wish to raise the fact that they have considered such a declaration at a committee meeting so that it can be minuted.

- 4.3 Anyone wishing to inspect the Register or seek clarification on the question of interests should contact the Council's Administration Officer.

## Member training

- 5.1 The Nolan Committee Report on Standards in Public Life, the Local Government Association and the Royal Town Planning Institute, all place particular emphasis on the need for Members to have adequate knowledge of the planning process. Training sessions will be arranged for all Members in order to keep themselves fully up to date with all relevant legislation and local, regional and national policies and guidance. Regular reports will be made to the Planning and Development Committee to keep Members fully updated to changes in planning legislation, policy and guidance.

## Lobbying

- 6.1 Lobbying is recognised as a normal and proper part of the democratic process. However, to protect their impartiality and integrity being called into question, Members must observe the following guidelines:
- 1 In addition to the declaration of a personal and prejudicial interest, make an oral declaration at the appropriate Committee of any significant individual contact with an applicant, objector or supporter of a proposal;
  - 2 Avoid expressing an opinion in advance of the determination of an application which may be taken as indicating that a Member has made up their mind without hearing all the relevant information and the arguments at the appropriate Planning and Development Committee;
  - 3 Restrict themselves to giving procedural advice only;  
Direct lobbyists, applicants or objectors to the relevant officer so that the opinions can be included in the officers' written report to be presented at the relevant Committee;
  - 4 Where a Member considers that their impartiality has been compromised declare an interest and withdraw from the decision making process;
  - 5 Not seek to organise support or opposition to a planning application;
  - 6 Not lobby other Members;
  - 7 Not pressurise officers for a particular recommendation;
  - 8 Seek the advice of the Chief Executive in his capacity as Monitoring Officer when they are unsure whether they have an interest and whether it should be declared;
  - 9 Membership of another Committee of the Council that has made a representation on a planning application as part of the consultation process, does not of itself give rise to conflict. However it is advised that the Chairman and Vice Chairman of the committee that has made such a representation should declare on interest and not participate in discussion and consideration of the application.
  - 10 The other Members of such a Committee would not normally need to declare an interest but must maintain an open mind until all the evidence and arguments have been heard at the relevant Planning and Development Committee;

- 11 If approached, Members may listen to any argument which is being put, but will make it clear that they have to keep an open mind up until the point at which a vote is taken on any proposal.
- 12 Members can give procedural advice, indicate how to go about making representations and direct people to the relevant Officer.
- 13 At all times Members of the Council will bear in mind that the National Code of Local Government Conduct refers to the “over-riding duty as a Councillor to the whole local community”.

## **Pre-application discussions**

- 7.1 Any discussion which take place prior to the formal submission of a proposal is seen as a useful part of the planning application process as acknowledged in the Council’s Statement of Community Involvement. Pre-application discussion allows advice to be given whether or not a proposal conforms to policy and can assist in the identification of possible areas of concern that may require addressing.
- 7.2 It has to be stressed that pre-application discussions do not constitute lobbying or commit the planning authority to a particular decision. Pre-application discussions will normally take place at Officer level although Members may also be involved. Members should only be involved in pre-application discussions in the company of an Officer.
- 7.3 Pre-application advice must be conducted within the following guidelines:
  - 1 It will be made clear at the beginning of each discussion that only provisional views can be expressed and that they will not bind the Council to making a particular decision, or compromise its position in any way, should a formal planning application be submitted following any discussions.
  - 2 Views will be expressed in the context of the Development Plan and other material considerations and applicants can expect consistency of interpretation of the relevant planning policies.
  - 3 The advice will be impartial and based on relevant planning considerations.
  - 4 It will be made clear that views are expressed without the benefit of any formal consultation and public advertisement and based on the information available at the time of the discussion.

## **Pre-planning and development committee meetings with the chairman and vice-chairman**

- 8.1 Prior to the Planning and Development Committee, it is usual for the Chief Planning and Development Officer to hold a meeting with the Chairman and Vice Chairman of the Committee to discuss each of the agenda items. In discussing any agenda item, the Chairman and Vice Chairman must not pressurise an Officer for a particular recommendation and keep an open mind until all the evidence and arguments have been heard at the Planning and Development Committee.

## Officer reports to the planning and development committee

- 9.1 It is important that reports to the Planning and Development Committee contain all of the relevant information to enable Members to make a decision in accordance with the requirements of legislation.
- 9.2 Given the nature of the planning process and the need to prepare reports in advance of the Committee meeting, there may be the need to add to the content of the report at the meeting. Any late representations or substantive information will only be circulated either in its own right or as part of an additional report if it can be distributed to Members prior to the day of the appropriate meeting. Representations or information submitted late that cannot be circulated to Members prior to the appropriate meeting may be tabled at the meeting for consideration but only at the discretion of the Chairman and Vice Chairman of the Planning and Development Committee.
- 9.3 Once it has been distributed to Members, anyone is entitled to view the whole or part of the report in the Planning and Development Department or on the Council's website at [www.scilly.gov.uk](http://www.scilly.gov.uk). Copies can be obtained but a charge may be made to cover costs. There is no charge for copies of reports distributed at the meeting of the Planning and Development Committee.
- 9.4 Reports to the Planning and Development Committee will conform to the following standards:
- 1 Reports will be accurate and cover the substance of objections, expressions of support and any other views of people who have been consulted or have submitted representations;  
Reports will include details of all the relevant planning policies and proposals, related site history and any other material considerations;
  - 2 Reports will contain an appraisal of all relevant policy, technical and other material considerations which justify the recommendation;
  - 3 Reports will have a written recommendation except in those rare circumstances where some critical and pertinent information is still awaited at the time of writing. In such cases, every effort will still be made to have a written recommendation circulated at the meeting;
  - 4 If there is insufficient information on which to present a full report with a recommendation to the Planning and Development Committee, officers will recommend that consideration of the item be deferred until the next meeting;
  - 5 Verbal reporting, except to update a written report as stated above, will only be justified in exceptional circumstances. Where a verbal report is unavoidable, it should be carefully minuted;
  - 6 If the recommendation in a report is contrary to the provisions of the Development Plan (or Local Development Framework), the material considerations which justify such a departure will be clearly stated;
  - 7 There is a statutory requirement to give a reason for refusal or approval of planning permission which is reflected in the content of the recommendation.

## Decisions contrary to an officer recommendation

- 10.1 In view of the democratic and discretionary basis of the planning process, Members are entitled to make decisions contrary to the professional advice of an officer. Members must have good reasons based on spatial or land use planning grounds if a decision is made contrary to an officer's recommendation so that it can be defended if challenged.
- 10.2 In such cases, a detailed minute of the Planning and Development Committee's reasons will be made and a copy placed on the file relating to that application. When a difference of opinion occurs, the Officer will be given the opportunity to explain the implications of the Committee's decision. The precise wording of the reasons for refusal or approval, including appropriate conditions, will normally be delegated to the Chief Planning and Development Officer in consultation with the Chairman and Vice Chairman of the Planning and Development Committee. In exceptional circumstances where the Chief Planning and Development Officer considers that inappropriate planning reasons have been put forward, a recommendation will be made to the Committee to defer the decision so that a further report can be prepared for the next planning meeting.
- 10.3 Should a decision contrary to a recommendation result in an appeal, the Officer will conduct the planning authority's case as far as he is professionally able to do so. However, there may be occasions where it is in the interests of the Council that Members who held the view which led to the decision may have to attend any pursuant public inquiry. Alternatively, an independent planning consultant may be required to attend an inquiry on behalf of the Council as a consequence of such a decision.

## Decisions contrary to the development plan

- 11.1 Section 36(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions should be taken in accordance with the Development Plan (or Local Development Framework) unless material considerations indicate otherwise.
- 11.2 The Planning Authority will only approve such applications if material considerations which lead to this decision are clearly identified and a justification for overriding the Development Plan (or Local Development Framework), has been clearly demonstrated. Depending upon the type and scale of development proposed and the significance of the departure, the application may then have to be referred to the Secretary of State via the Government Office for the South West. Generally, this would involve an instance where the development, by reason of its scale, nature or location would significantly prejudice the implementation of the Development Plan's (or Local Development Framework's) policies and proposals.
- 11.3 If an Officer recommends approval of an application that is contrary to the Development Plan (or Local Development Framework), the justification for this recommendation will be included in the report to the Planning and Development Committee.

## Public speaking

- 12.1 There is no provision for public speaking at the Planning and Development Committee although this situation will be subject to review.

## Committee site visits

- 13.1 Site visits should only be considered where there is a substantial benefit to the decision making process such as when the impact of the proposed development is difficult to visualise from the plans and the supporting material, or when the proposal is particularly contentious. Site visits should be carefully organised to ensure that the purpose, format and conduct are clearly established at and subsequently adhered to. Members are advised not to attend unofficial site visits at the invitation of an applicant without the presence or authorisation of the Chief Planning Officer in order to prevent their impartiality and integrity from being called into question.
- 13.2 A site visit in relation to a planning application may be arranged prior to the relevant meeting of the Planning and Development Committee if the Chief Planning and Development Officer considers it would benefit its consideration.
- 13.3 Occasionally a site visit may follow a deferral of an item at the formal meeting but every effort will be made to avoid such an eventuality.
- 13.4 The purpose of a site visit is purely to allow Members to view the site and its surroundings and to gauge the impact of a proposal. It is not an opportunity for Members to debate the application or express any views prior to its consideration at the appropriate Planning and Development Committee. Similarly, a site visit is not an opportunity for applicants, objectors or supporters to lobby Members for their particular point of view. For the most part, site visits will be unaccompanied (i.e. without applicant, agent or any other interested parties). However, there may be occasions where it is appropriate for applicants and their agents and other interested parties to be invited to a site visit to offer information in order to clarify particular issues in relation to a proposal.

## Planning applications submitted by councillors or officers and the council's own development

- 14.1 When a planning application is submitted by a serving Member or Officer, or by a close relative or a close friend of either, or by a Member acting as agent for the applicant, the Member or Officer concerned will:
- 1 Take no part in the processing and determination of the application; and
  - 2 Inform the Monitoring Officer and the Chief Planning and Development Officer of



the application.

- 14.2 Where an application is made which falls under paragraph 14.1, the serving Member or Officer shall do nothing in relation to that application which might reasonably be perceived as seeking to improperly influence the views or conduct of the Chief Planning and Development Officer or any Member of the Planning and Development Committee.
- 14.3 All applications which fall within paragraph 14.1 above will be determined by the Planning and Development Committee and under no circumstances delegated to the Chief Planning and Development Officer.
- 14.4 Proposals for a Council's own development must be treated in the same way as those proposals submitted by private developers.

## Annual review

- 15.1 An annual report will be made to the Planning and Development Committee to review planning decisions made by the Committee, Officers and by the Planning Inspectorate on appeal.

## Concerns or complaints

- 16.1 Issues of concern or complaint arising out of this Protocol may be raised:
- 1 With the Chief Planning and Development Officer or Chief Executive in his capacity as Monitoring Officer;
  - 2 Through the Council's formal complaints procedure; or
  - 3 Where there are issues of maladministration they can be referred to the Local Government Ombudsman.