



# Council of the Isles of Scilly

Planning Department

Planning Protocol

2018



Council of the  
ISLES OF SCILLY



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## 1. Introduction

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1. This document was approved by Members of Full Council on the 2<sup>nd</sup> October 2018. The purpose of this Planning Protocol is to establish the standard of conduct for both Members and Officers of the Council when dealing with planning matters. The standards set out in the protocol will also apply to anyone outside of the Council who is co-opted onto one of the Council's 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.
2. This Protocol is additional to the Council's Local Code of Conduct established under the Local Government Act 2000 and which provides the principal source of standards expected of Members.
3. Guidance for Chartered Town Planners is set out in the Royal Town Planning Institute's Code of Professional Conduct.
4. 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 development plan policies unless material considerations indicate otherwise.
5. At the Member level the responsibility for making decisions on planning matters sits with the Full Council. However, at an officer level the Council's planning function, through the Council's adopted Scheme of Delegation, is delegated to the Senior Manager for Infrastructure and Planning. However, in the circumstances set out in section 14 below, certain planning applications will require a decision at Full Council. The default decision making level for any other application is to the Senior Manager for Infrastructure and Planning, unless it is called in for a decision at Full Council or the Senior Manager deems an application decision should go to Full Council, because an application is contentious or significant. A 'call-in' request form has been provided in the appendices to this document. Any Member wishing to call-in an application identified as 'delegated' should complete the 'call-in' request form in the interests of transparency of decision-making. This form will be placed in the public domain and should be submitted to the Planning Department within 21 days of the application appearing on the weekly list (or from the date of the site notice). After this time the decision could otherwise be made on the application in question under delegated powers.

## 2. Role and Conduct of Elected Members

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6. 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 Full Council 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 plans and material planning considerations.

7. In dealing with planning matters Members or Officers as appropriate will:
  - a) Declare any personal or other relevant interest their Code of Conduct obliges them to disclose 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);
  - b) Act impartially and honestly;
  - c) Approach each planning application or consideration of the preparation of a planning document with an open mind;
  - d) Take into account and carefully weigh up all relevant issues;
  - e) Determine each planning application on its own merits and in accordance with the requirements of Planning Law and the guidance of planning policy;
  - f) Avoid inappropriate contact with interested parties (see further the section on lobbying at Section 6 below).

### 3. The Role of Officers

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8. The role of an Officer in advising and assisting elected Members of Full Council, or an Officer making a decision under delegated authority, in their determination of planning applications is to ensure that all of the relevant issues and information are available to enable them to make a decision in accordance with the requirements of the law. As such, Officers will provide:
  - a) Impartial and professional advice;
  - b) Consistency of interpretation of the planning policies;
  - c) Complete written reports which will include:
    - o A clear and accurate analysis of the issues in the context of the relevant development plan policies and all other material considerations;
    - o The substance of the representations, objection and views of all those who have been consulted;
    - o A clear written recommendation of action and where that recommendation is contrary to development plan policies, the material considerations which justify the departure; and
    - o Any other information necessary for the decision to be made.



## 4. Declaration and Registration of Interests

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9. Members and Officers are obliged by the Council's Standing Orders and their respective Codes of Conduct to make known any personal or other relevant 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.
10. Registers of Members and Officers known and declared interests are kept by the Council and, subject to data protection rules, are 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 required by Standing Orders, their Code of Conduct 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 whether they have an interest at a committee meeting so that it can be minuted.
11. Anyone wishing to inspect either of the Registers or seek clarification on the question of interests should contact the Council's Democratic Services Department.

## 5. Member Training

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12. 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 them fully up to date with all relevant legislation and local, regional and national policies and guidance. In addition to planning training for any newly elected Member, Officers will seek to regularly provide training for Members. Regular reports will be made to Full Council to keep Members fully updated on changes in planning legislation, policy and guidance.

## 6. Lobbying

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13. 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:
  - a) In addition to the declaration of an interest, make an oral declaration at the Member meeting of any significant individual contact with an applicant, objector or supporter of a proposal;



- b) 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 Member meeting;
  - c) Restrict themselves to giving procedural advice only. Members can give procedural advice, indicate how to go about making representations and direct people to the relevant Officer;
  - d) 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 Member meeting;
  - e) Where a Member considers that their impartiality has been compromised that to be the case and withdraw from the decision making process;
  - f) Not seek to organise support or opposition to a planning application;
  - g) Not lobby other Members;
  - h) Not pressurise officers for a particular recommendation;
  - i) Seek the advice of the Monitoring Officer when they are unsure whether they have an interest and whether it should be declared or if they have conducted themselves in such a way that allegations of bias or predetermination could be made;
  - j) Membership of a 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.
  - k) 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 Committee. They should seek advice from the Monitoring Officer when necessary;
  - l) 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; and
  - m) At all times Members of the Council will bear in mind their responsibilities under their Code of Conduct.
14. Officers involved in the determination of planning matters under delegated powers should have regard to the above principles and ensure they act in a way that demonstrates transparency and probity in the decision-making process.

## 7. Pre-Application Discussions

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15. Any discussion which takes 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.

16. 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.
17. Pre-application advice must be conducted within the following guidelines:
  - a) 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.
  - b) Views will be expressed in the context of the development plans and other material considerations and applicants can expect consistency of interpretation of the relevant planning policies.
  - c) The advice will be impartial and based on relevant planning considerations.
  - d) 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.

## 8. Pre-Full Council Agenda Briefing Meetings with the Lead Member for Planning

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18. Prior to a Full Council meeting, it is usual for the Senior Manager for Infrastructure and Planning or the Senior Officer for Planning and Development Management to hold a meeting with the Lead Member for Planning to discuss each of the planning-related agenda items. In discussing any agenda item, the Lead Member for Planning must remain impartial and keep an open mind until all the evidence and arguments have been heard at the Full Council meeting.

## 9. Officer reports to Full Council

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19. It is important that reports to Full Council contain all of the relevant information to enable Members to make a decision in accordance with the requirements of the law.
20. Given the nature of the planning process and the need to prepare reports in advance of the meeting, there may be the need to add to the content of the report at the meeting. Any late representations or substantive information will usually 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 of the Council, or if the Chairman is not present, the person chairing the meeting.

21. Once it has been distributed to Members, anyone is entitled to view the whole or part of the report at the Planning 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 already printed and made available at the meeting of Full Council.
22. Planning reports to Full Council will conform to the following standards:
  - a) 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;
  - b) Reports will include details of all the relevant planning policies and proposals, related site history and any other material considerations;
  - c) Reports will contain an appraisal of all relevant policy, technical and other material considerations which justify the recommendation;
  - d) 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;
  - e) If there is insufficient information on which to present report with a recommendation to Full Council, officers will either not present a report until all of the relevant information is available or provide a preliminary report and recommend that consideration of the item be deferred until the next meeting;
  - f) Verbal reporting, except to update a written report as stated above, will ordinarily not be permitted. Where a verbal update is unavoidable, it should be carefully minuted; and
  - g) If the recommendation in a report is contrary to the provisions of the development plan, the material considerations which justify such a departure will be clearly stated.

## 10. Decisions Contrary to an Officer Recommendation

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23. 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.
24. In such cases, a detailed minute of the Full Council'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 Member decision. Providing clear planning reasoning has been given for a contrary decision the precise wording of the reasons for refusal or approval, including appropriate conditions, may be delegated to the Senior Manager for Infrastructure and Planning, where appropriate in



consultation with the Lead Member for Planning. In certain circumstances where either the Monitoring Officer or Senior Manager for Infrastructure and Planning consider that inappropriate planning reasons have been put forward, appropriate advice will be provided to Members and a recommendation may be made to Full Council to defer the decision so that a further report can be prepared for the next Full Council meeting.

25. Should a decision contrary to a recommendation result in an appeal, the Planning Officer will conduct the planning authority's case as far as they are able to professionally do so. There may be occasions, however, where it is in the interests of the Council that those 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.

## 11. Decisions contrary to the Development Plan

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26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that decisions should be taken in accordance with the development plan policies unless material considerations indicate otherwise. The 2018 National Planning Policy Framework reaffirms this as the starting point for decision making.
27. The Local Planning Authority will only approve applications that are contrary to the development plan, if material planning considerations which lead to this decision are clearly identified. This clear justification for overriding the development plan will be clearly set out in the report to the decision maker written by the Planning Officer dealing with the application. 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. Generally, this would involve an instance where the development, by reason of its scale, nature or location would significantly prejudice the implementation of development plan policies and proposals.
28. If an Officer recommends approval of an application that is contrary to development plans, the justification for this recommendation will be included in the report to the decision maker, whether Full Council or the authorised officer.

## 12. Public Speaking

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29. There is no provision for public speaking at the Full Council although this situation will be subject to review. At the present time there are no administration resources available to set up and manage this process and nor is there any demonstrable need for public speaking to be permitted.



## 13. Committee Site Visits

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30. 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 Senior Manager for Infrastructure and Planning, or their nominee, in order to prevent their impartiality and integrity from being called into question. An officer being asked to determine a planning application similarly needs to exercise caution.
31. A site visit in relation to a planning application may be arranged prior to the relevant meeting of the Full Council if the Senior Manager for Infrastructure and Planning considers it would benefit its consideration.
32. Occasionally a site visit may follow a deferral of an item at a Member meeting but every effort will be made to avoid such an eventuality.
33. 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 Full Council. 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 undertaken without the applicant, agent or any other interested parties present, but in the presence of an officer. 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. When this does happen Members must ensure that they remain objective and impartial and do not express their views on the merits of the application or how they might vote at the Full Council meeting.

## 14. Referral for Full Council Decision

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34. All applications which fall within categories 1) to 5) below will automatically be referred for a Full Council decision and a report will be prepared and presented to Members at the next available Full Council meeting, once the application has been fully consulted on.
  - 1) When a planning application is submitted by a serving Member or Officer of the Council, or by a close relative of either, or by a Member acting as agent for the applicant, the Member or Officer concerned will:
    - a) Take no part in the processing and determination of the application; and
    - b) Inform the Monitoring Officer and the Senior Officer: Infrastructure & Planning of the application.



- 2) Major developments.<sup>1</sup>
  - 3) Significant Infrastructure Projects.
  - 4) Proposals for the Council's own development. These will be treated in the same way as those proposals submitted by private developers.
  - 5) Applications that are deemed to be a 'departure from the development plan'.
35. All other applications will be referred to the Senior Manager for Infrastructure and Planning for a decision to be made under delegated powers. However, there is the ability for Members to request that applications are referred to Full Council for determination and it is down to individual Members to 'call-in' an application, which must be done in writing, and state their reason for a Full Council decision. A form has been provided for Members, which is included as an appendix to this document. Any forms requesting a Full Council decision will be subject to consideration by the Senior Manager for Infrastructure and Planning and in consultation with the Lead Member for Planning. Forms submitted will be placed in the public domain, in the interests of transparency of decision making. Any call-in request must be agreed with the Senior Manager and either the Lead for Planning or the Chairman or Vice-Chairman of the Council. In all cases a report will be written by Planning Officers and made publically available.
36. For clarification major developments on Scilly will include any new dwellings and any new buildings for industrial processes that fall within use class B2 (General Industry). This is in addition to the applications that fall within the definition of Major Development or any application deemed to be a 'departure from the development plan'.

## Annual Review

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37. An annual report will be made to Full Council to review planning decisions made by the Members, Officers and by the Planning Inspectorate on appeal.

## Concerns or complaints

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38. Issues of concern or complaint arising out of this Protocol may be raised:
- With the Senior Manager for Infrastructure & Planning: [planning@scilly.gov.uk](mailto:planning@scilly.gov.uk); or
  - For complaints about Member behaviour through the Council's Standards Complaints procedure: [standards@scilly.gov.uk](mailto:standards@scilly.gov.uk).

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<sup>1</sup> "major development" means development involving any one or more of the following— (a) the winning and working of minerals or the use of land for mineral-working deposits; (b) waste development; (c) the provision of dwellinghouses where— (i) the number of dwellinghouses to be provided is 10 or more; or (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i); (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or (e) development carried out on a site having an area of 1 hectare or more; "mining operations" means the winning and working of minerals in, on or under land, whether by surface or underground working.



- 39. Where you consider the above does not address your concerns then a formal complaint to the Council can be made through the Council's formal complaints procedure: <http://www.scilly.gov.uk/complaints>.
- 40. Finally should you remain dissatisfied with the outcome and you consider there are outstanding matters or issues of maladministration these can be referred to the Local Government Ombudsman: <https://www.lgo.org.uk/make-a-complaint>.



# Appendix

## Member Comments/Call-in or Site Visit Request Form

Please Note that Submissions on this Form will be available to read on the website and public file.

Application Number: .....(Essential).

Site Address:.....(Briefly such as name of property).

Declaration of Interest:.....(if any).

Comments:.....  
.....  
.....  
.....

Call-in for Full Council Decision (Please tick or provide other reason):

- .....Concerns about the impact upon **residential amenity**.....
- .....Concerns about **highway safety issues**.....
- .....Concerns about **environmental impacts**.....
- .....Concerns about **heritage impacts**.....
- .....Concerns about **other impacts**.....

.....(Material Planning Reasons only)

.....I would like a **Site Visit**.

Name Of Councillor:.....

Date:.....

Please note that comments should be sent back to [planning@scilly.gov.uk](mailto:planning@scilly.gov.uk) or dropped in to the Town Hall. **This should be returned within the 21 day consultation period.** As with any comments made in relation to a planning application, comments made on this form will



be placed on the planning file and published on the Council's website in relation to the application(s) to which comments relate.

Any request for a Full Council decision and/or site visit will need to be agreed with the Senior Manager for Infrastructure and Planning in consultation with the Lead Member for Planning.

**END**

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