

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 Planning 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 they 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 Members may find the following guidance issued on the issue of pre-determination and pre-disposition helpful in relation to the consideration of planning matters. Section 25 of the Localism Act came into force on 15 January 2012 and states that:

“a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because:

(a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter and

(b) the matter was relevant to the decision”.

The Act recognises that politicians need to be able to express views without fear of challenge and to enable them to play an active part in local decisions. The effect therefore is that, just because a view has been given, this is not automatically construed as a “closed mind”. However, if the facts of a particular case show that the member or members did have a closed mind at the point of decision making, this could result in a judgement of unlawfulness.

You will still need to take into account all relevant considerations, not be irrational, nor take a decision for an improper purpose. In addition, human rights and proper consultation (where appropriate) need to be followed.

Put simply, if people believe you are favouring a particular application or are vehemently opposed to a development, you should aim to caveat your view by adding that you have not made a final decision, as that must wait until you receive all available information at the planning committee. It would not be appropriate to make such exclamations about an application such as, "not in my lifetime" or "nothing will change my mind".

- 4.4 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 they should make it clear that they will not form a final opinion until they have considered all the information.
- 4.5 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 they have 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 disclosable pecuniary interest as defined in the County Council's Code of Conduct for Members'.
- 4.6 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.

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 Chair of the Site Visiting Committee.

- 5.3 The Site Visiting Committee shall normally comprise the Chair 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 Chair, 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 Chair). 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 they are 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 Chair 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 May 2013 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 Relevant information will include a clear assessment against relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations and any other material planning considerations.
- 7.4 Any oral presentations raising new matters and updates by officers to the committee will be minuted.
- 7.5 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 while they make still speak in any debate they should not vote on that application.
- 7.6 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations that justify this must be clearly stated.
- 7.7 Where an application is recommended for refusal the reasons will be set out in full in the officers' report.

Decisions contrary to officer recommendation

- 7.8 The law requires that decisions should be taken in accordance with the Development Plan, unless material considerations (which specifically include the NPPF) indicate otherwise.
- 7.9 The Development Management Committee is entitled to make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.
- 7.10 Before making a decision which differs from the officer recommendation the Development Management Committee may take the following steps:
- discuss the areas of difference and the reasons for that with planning officers at the chair's briefing session, if practicable;
 - record the detailed reasons as part of the mover's motion;
 - if necessary, adjourn for a few minutes for those reasons to be discussed by all Members of the Committee present and then to be agreed formally by the Committee; and
 - where there is concern about the validity of the reasons consideration should be given to defer to another meeting to have the reasons tested and discussed.
- 7.11 If the Development Management Committee makes a decision contrary to officers' recommendation a detailed minute of the committee's reasons will be made and a copy placed on the application file.
- 7.12 Where an application is refused contrary to officer advice, reasons for refusal will be agreed at the committee meeting and these should be based on material planning considerations and recorded in the minutes. An opportunity will be given to the officer to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.

Free from political instruction

- 7.13 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

- 7.14 The Council's Code of Conduct for Members' sets out requirements and guidance for members on declaring disclosable pecuniary or personal 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.
- 7.15 A Member with a disclosable pecuniary interest in respect of a particular planning matter must declare it and take no part in the determination of the proposal. They should leave the room. There is no opportunity for a member with a disclosable pecuniary interest to speak to the item being debated. Advice can be obtained from the County Solicitor if required, in advance of a Committee meeting, but it is unsatisfactory if a member asks for guidance in the course of a debate. Where a Member does not have a direct, disclosable personal interest they should nonetheless adhere to the general principles of public life set out in the Council's Code of Conduct and seek to avoid giving the impression of or being perceived to have conferred any advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, a member of their family, close associate or relevant person.
- 7.16. The Local Government Association/Planning Advisory Service publication "Probity in Planning" (revised April 2013) is a key document outlining how Members and Officers should approach this issue.

Requests by Members for information

- 7.17 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

- 7.18 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.

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### **Devon Duty to Cooperate Protocol**

All Councils are required by the Localism Act 2011 to co-operate with a variety of organisations to ensure that planning issues which cross local authority boundaries are considered effectively and appropriately. The County Council has worked closely with other local authorities and a range of other organisations in the County to produce a '*Devon Duty to Co-operate Protocol*' setting out how co-operation on planning matters will function in Devon. The Protocol, which supplements the Development Management Protocol is available at [http://www.devon.gov.uk/index/environmentplanning/planning-system/the\\_duty\\_to\\_co-operate.htm](http://www.devon.gov.uk/index/environmentplanning/planning-system/the_duty_to_co-operate.htm)). It does not form part of the Constitution but is referred to here for convenient reference.