

Part 5d

Member and Officer Protocol for Planning

Member and Officer Protocol for Planning Matters	
Effective from	Approved by Council

1. Introduction

- 1.1 The role of the planning system is to regulate the use and development of land in the best interests of Blackpool both immediately and in the future. It can affect the private lives of individuals, the interests of landowners and developers but also the future of the town. It is essential that the Council should make such decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.2 Councillors and Officers are both involved in operating the planning system although they have different yet complementary roles. The successful operation of the planning process relies on mutual trust and understanding of each other's roles. It also relies on both groups ensuring that they act in such a way which is not only fair and impartial but is also clearly seen to be.
- 1.3 The protocol outlines the requirements of all parties. It should be read in conjunction with the Council's Constitution, in particular the relevant Codes of Conduct for both officers and members as well as the Royal Town Planning Institute Code of Conduct which sets out the professional conduct for officers.

~~1. INTRODUCTION~~

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- ~~1.1 This Protocol forms part of the Council's Constitution and should be read in conjunction with the Constitution, in particular the Members' Code of Conduct including the section on the declaration of interests and so both should be borne in mind when considering planning applications.~~
- ~~1.2 This Protocol particularly applies to members of the Planning Committee but it also applies to other members when involved in the planning process for example as applicants, objectors or interested parties.~~
- ~~1.3 This Protocol also applies to officers and where it does, officers are also bound by the Council's Code of Conduct for Employees and if they are members of the Royal Town Planning Institute, that organisation's code of professional conduct.~~
- ~~1.4 It should be noted that the role of the planning system is to regulate the use and development of land in the public interest. Accordingly, planning decisions must be seen to be impartial and properly justified. The planning system can only operate effectively if there is trust among the various stakeholders: the public, applicants, developers, elected members and officers.~~

2. Role and conduct of Members and Officers

Role of Members

2.1 When Councillors come to make a decision on a planning matter they must:

- Act fairly and openly
- Approach each case with an open mind
- Read the reports and any additional information such as viewing photographs, video footage in advance of the meeting and prepare for the Committee meeting
- Pay attention to representations received
- Use the Council's planning policy and guidance as their basis for making a decision
- Consider national planning policy and guidance
- Consider whether the application could contribute to a solution to a social, economic or environmental challenge within Blackpool
- Carefully weigh up all relevant issues before reaching a view on a particular case
- Determine each case on its merits
- Ensure that there are clear and substantial reasons for their decisions and that those reasons are clearly stated.

2.2 Councillors should remember that while acting as a member of the Planning Committee that they have a responsibility to ensure planning policies are equitably and evenly applied. Councillors will find that decision making can be difficult as it may often be forced to balance competing demands (for example the prosperity of the wider town with the objections of residents neighbouring the proposed development or equally the benefits that might accrue in the future).

Role of Officers

2.3 The function of officers is to advise and assist Councillors in matters of planning policy and in their determination of planning applications and enforcement issues by:

- Providing impartial professional advice
- Use adopted Council policies as the basis for decision making
- Ensure that all available information relevant for the decision to be made is given including details of representations and rationale for the recommendation to the Committee
- Outline the material considerations and highlight where representations include matters relevant to a planning decision.
- Providing a clear, logical and accurate analysis of the issues
- Implement the decisions of the Planning Committee.
- Determine which applications under the Council's scheme of delegation are to be considered by Committee or by the Head of Development Management under delegated powers.

~~—Role and conduct of members and officers~~

~~2.4 Elected members and officers have different but complementary roles. Both serve the public but members are accountable to their electorate and officers accountable to the Council as a whole, as their employer.~~

~~2.5 The main duty of elected members is to represent their constituents as a whole, including those who did not vote for them. This is especially relevant to planning matters where~~

~~often those decisions are taken against the interests of individuals, but for the benefit of the wider community.~~

- ~~2.6 Officers who are chartered town planners must act in accordance with the Royal Town Planning Institute's (RTPI) Code of Professional Conduct and breaches of that code will be subject to separate disciplinary action by the Institute. All officers are expected to follow the Council's Code of Conduct for Employees, or any other relevant code.~~
- ~~2.7 Elected members are free not to follow the advice of the professional officers. Professional officers may also have a change of opinion but this must be based on a professional judgement and they must not be allowed to be influenced by elected members or other officers to change their opinion where this does not genuinely represent their professional view.~~
- ~~2.8 The Council has a designated Head of Development Management who has direct access to elected members as their professional adviser on planning matters.~~

3. Training on planning matters

- 3.1 All members of Planning Committee are required to receive training on planning and conduct matters prior to being involved in the work of the Committee. This will help members undertake their role in as a professional manner as possible.
- 3.2 The Head of Democratic Governance will set a training plan for all members after consultation with the Chairman and the Head of Development Management and in accordance with the priorities in the Member Development Plan.
- 3.3 Members of the Committee should raise topics that they wish to covered by such training and their feedback on training will requested regularly.
- 3.4 The names of members who do not attend such training will be reported to the relevant Group Leaders with a clear recommendation that such members who have not attended training regularly be removed by their party from the Planning Committee.
- 3.5 Councillors who are not members of the Planning Committee are also able to attend such training if they wish to develop their knowledge of the process.

4. Declarations of Interest

- 4.1 Councillors must consider all the material planning considerations before them with open minds (and appear as so) at the time of determination of the application.
- 4.2 While it is for the individual Councillors to decide whether there is an interest to declare, the potential consequences of a failure to declare an interest should always be borne in mind as should personal bias and a closed mind as these can have serious consequences for the elected member, the decision and the Council. Failure to observe this Planning Protocol could result in the Councillor being reported to the Council's Monitoring Officer.
- 4.3 Councillors must declare all interests in the matter for consideration and where appropriate withdraw from the meeting. The nature and the existence of the interest should be clearly declared. Further information is available on the code of conduct which applies to all Council meetings.
- 4.4 The Head of Democratic Governance can provide advice and guidance on potential interests. Where Councillors are unclear they should contact the Head of Democratic

Governance or another member of the Democratic Governance team as early as possible in advance of the meeting to assist the Councillor in making their decision whether they have an interest.

- 4.5 ~~Failure to declare an interest could result in the decision being judicially reviewed by the courts and revoked. The costs of defending a decision in a court can be significant. It can also lead to a successful appeal against refusal of planning permission and the failure of an elected member to correctly declare an interest could be used to support an appellant's case that the refusal was unreasonable. This could have consequences for the appeal against the Council and the chance of costs being awarded against the Council.~~
- 4.6 ~~Failure to declare an interest could also lead to a complaint being made to the Local Government Ombudsman which can recommend the making of a financial payment if a finding of maladministration is made.~~

5. Bias

- 5.1 It is important that Councillors who are making decisions approach any decisions with an open mind. This rule applies whether the Councillor does or does not have an interest in the matter. Decisions must be made strictly on planning grounds and have considered all relevant factors outlined in the officer's report. The appearance of bias is particularly likely where a member has expressed a settled view on a planning matter in advance of a meeting.
- 5.2 The Localism Act has clarified that there is a difference between '**predisposition**' and '**predetermination**'.
- 5.3 A Councillor is biased if they have or appear to have **predetermined** a planning application in so much that they have made up their minds before considering all the evidence or if they choose to ignore some evidence.
- 5.4 A Councillor can express a **predisposition** in favour or against a planning application without being biased, so long as the Councillor has not closed their mind and this is clear to those involved.
- 5.5 It should be noted that perception is equally important so Councillors should clearly avoid giving the appearance both by verbal and non-verbal communication that they have closed their minds to an issue.
- 5.6 Where it is agreed to defer a matter to a future meeting, issues raised in debate prior to the deferral do not indicate necessarily that a Councillor will be biased when the matter is reconsidered unless this is expressly stated.
- 5.7 Councillors cannot accept an instruction from anyone to determine an application in a particular way. It is not appropriate for any party or group of members to apply a whip or other formal or informal instruction to vote in a certain way.

6. Role as a ward councillor

- 6.1 Members have an important role as ward councillors in representing those living in their ward's views on planning applications.
- 6.2 There is a procedure in place so that members can request that an application is considered by the Planning Committee rather than dealt with under delegated powers and this is outlined at Appendix A to this protocol.
- 6.3 Ward Councillors can also make representations to the Planning Committee by applying in

writing or by email by 12 Noon the day before the meeting.

- 6.4 Where the Ward Councillor is also a member of the Planning Committee they can either choose to refer those interested in the application to their ward colleague or they can choose to remove themselves from the Committee to make representations to it. They can also submit any views in writing.

7. Development proposed by the Council or a Council owned or controlled company

- 7.1 Planning legislation allows Councils and bodies controlled by them to submit and determine development proposals which they intend to carry out themselves. These shall be considered in the same way as those put forward by private developers.
- 7.2 Members of the Planning Committee who are also Board members of Council-owned companies will have a prejudicial interest in planning applications submitted by or on behalf of which affect the Company and should not take part in the consideration of the application.
- 7.3 The Council should treat such applications on an equal basis with all other applications.

8. Development proposed by individual members or officers or persons related to them

- 8.1 Councillors or officers should never act as agents for another person in pursuing planning applications within the Borough or which materially affect the Borough. If members or officers submit their own proposal to the Council they should take no part in the processing and determination of that proposal and they should not be involved in the processing and determination of applications submitted by close family, personal friends or business associates. The Council's Head of Development Management should be informed of all such proposals as soon as they are submitted.
- 8.2 These applications will be determined in line with the processing of all other applications but with the relevant elected member or officer excluded from the process.
- 8.3 Officers must not deal with development proposals and planning applications in which they have any form of interest.

9. Lobbying of and by members

- 9.1 Lobbying is a necessary and legitimate part of the democratic and planning process. Those affected or who have strong views on a proposal for development will often try to canvass the Planning Committee to get members of the Committee to share those views. The time though for individual members of the Planning Committee to make a decision on a proposal is at the Committee meeting when all the relevant information is available and has been properly considered.
- 9.2 Councillors are free to listen to a point of view about a particular proposal and to provide basic advice on how the application will be processed (details of relevant contact officers, how to register to speak etc). They should be careful however to reserve their own final judgement until the Planning Committee meeting and to make it clear that this is the case.
- 9.3 Councillors should not circulate information to other members of the Planning Committee and instead refer such submissions to the Head of Development Management for assessment and/or inclusion in the report to the Committee or Update Note.

10. Pre- and post- application discussions

- 10.1 Councillors on the Planning Committee need to uphold their position as impartial decision makers and it would not be appropriate for them to take part in pre or post application discussions with applicants regarding a proposed development.
- 10.2 It is reasonable for Councillors to refer such discussions to the Head of Development Management who can arrange a factual discussion of whether the application as proposed appears to be in line with the Council's approved planning policies.
- 10.3 During any pre-application discussions or meetings with the applicant, it will be made clear at the outset the Council will not as a result of such discussion be bound to make a particular decision and such views are provisional and not the formal decision of the Committee.

Major applications submitted may make use of information sessions for members. The purpose of such sessions is to allow members to gain a broad understanding of the application and to request further information.

11. Officers' reports to Committee

- 11.1 The officer's report to Committee will include the following information:
 - A professional appraisal and balanced presentation of the application.
 - A clear recommendation including justification for the recommendation.
 - Where an application is recommended for approval - reasons for the approval, relevant conditions and the reasons for those conditions.
 - Where an application is recommended for refusal - reasons for that refusal and why in the opinion of the officer conditions could not mitigate these issues.
 - A history of the site
 - The proposal
 - The substance of any representations received
 - The relevant policies applicable
 - Any other material considerations
 - A view as to why alternative options have not been considered suitable.
 - Any material considerations that would justify a departure from the development plan.
 - A plan of the site.
 - Suitable photographs and other visual material eg video footage.
 - A link to the online planning file where the full details of the representations and other relevant information referred to in the report can be found.
- 11.2 An update note is produced containing any new information submitted after the agenda is published and will be circulated in advance of the meeting. If additional information is submitted after the compilation of the update note that is relevant to the discussion, it may be necessary to defer consideration of the planning application to a future meeting or adjourn the Committee briefly to enable proper consideration of the additional information.
- 11.3 Councillors should read carefully the officer's report in advance of the Committee meeting and where necessary seek clarification at the meeting of the information contained within. If Councillors wish additional information or photographs/video footage to be added to the report they should contact the Case Officer to request that these be circulated with the update note. It is however perfectly proper for a member to ask the planning officer to ensure that a particular issue is dealt with in the presentation to Committee in advance of the meeting.

12. Decisions contrary to officer recommendation

- 12.1 The decisions at Planning Committee (as outlined previously in paragraph 2.1) can only be made in reference to the Local Plan and other material planning considerations. Decisions can however be made against officer recommendation so long as a reason is given which is clear and convincing. Councillors should in making a decision outline their good and valid planning reasons for departing from the officer's recommendation.
- 12.2 However, it should be noted that the correct place to seek changes to the Local Plan is through a review of the plan at full Council - the Committee cannot seek to amend Council policy at Planning Committee meetings.
- 12.3 Where Councillors wish to make a decision to refuse a planning application against officer recommendation they should seek outline reasons for that decisions. The following courses of action can be undertaken to assist this process:
- A Councillor should approach the Head of Development Management in advance of the Committee meeting and ask to assist in translating the preliminary view of the member into sustainable reasons for refusal with reference to planning policy.
 - Councillors can seek a brief adjournment of the meeting to allow officers to assist in the formulation of such reasons.
- 12.4 Where Councillors wish to make a decision to grant planning permission against officer recommendation they should outline a reason for the decision and if applicable propose conditions. Members should remember that if no conditions are proposed then the application would be granted without restrictions and should consider carefully the implications for a planning permission granted in such a way. The following courses of action can be undertaken to assist this process:
- A Councillor should approach the Head of Development Management in advance of the Committee meeting and ask to assist in translating the preliminary view of the member into sustainable reasons for approval and identify suitable conditions with reference to planning policy.
 - Councillors can seek a brief adjournment of the meeting to allow officers to assist in the formulation of conditions

13. Viewing sites

- 13.1 The report, the update note and presentation at Committee will contain suitable photographs, videos, images and plans to assist Councillors in making their decision. In line with paragraph 11.3, having viewed the agenda, if Councillors wish additional information or photographs to be added to the report they should contact the Case Officer to request that these be circulated with the update note.

- 13.2 It has been agreed site visits do not need to take place for planning applications apart from in exceptional circumstances. Councillors of course remain able to use their local knowledge to assist in the decision making and can visit the site independently so long as they do not engage with any other parties.

- 1** ~~In light of this when~~ If a member of the Committee considers that there are exceptional circumstances to warrant a site visit, they should ~~it would require the member to~~ contact the Head of Development Management and explain in writing why such a visit was essential. This statement would include the exceptional circumstances of the application and why it was not possible to source the required photographs, images and videos. This would then considered by the Head of Planning Quality Control after consultation with the Chairman. **SITE VISITS**

- ~~1.1 The council's code of conduct applies as much to site visits as to any other area of conduct.~~
- ~~1.2 Organised committee site visits to application sites will be held where the committee has, by a majority, requested such a visit or where requested by officers, in consultation with the chairman or vice chairman of the committee.~~
- ~~1.3 Site visits should only be held:~~
- ~~1.3.1 Where the expected benefit is substantial; and/or~~
- ~~1.3.2 The impact of the proposed development is difficult to visualise from the plans and supporting material, including photographs/video footage taken by officers.~~
- ~~1.4 Site visits will be primarily to view the site and appreciate how the proposed development relates to the site and its surroundings. An officer(s) would be in attendance with the members. No discussion of the merits of the proposal will take place as the site visit is purely to assess the effect of the proposed development on the surroundings. However, members may ask factual questions to confirm their understanding of physical features of the site or its surroundings.~~
- ~~1.5 Planning applications will not be determined at site visits but will be reported back to the Development Management Committee (following the site visit) for determination in the normal way.~~
- ~~1.6 If an applicant/agent or objector is present at the time of the visit, members should explain the purpose is to see the site and surroundings, and not to hear representations, and should not offer any opinion whatsoever and in particular should not indicate that they have already made up their mind on the application/issue.~~
- ~~1.7 It is not expected that members will make personal site visits which would result in contact with an applicant, agent or objector. Exceptionally, members who wish to view sites prior to a meeting of a committee, other than authorised and arranged visits in accordance with 11.2 to 11.6 should bear in mind at all times that the sole purpose is to view the site and its surroundings.~~
- ~~1.8 A member should declare at the Development Management committee at which the application is considered that a personal site visit has been made by them which has resulted in contact with the applicant, agent or objector.~~

14. Complaints

- 14.1** Any complaints made about the planning process should be recorded and would normally be dealt with in the Council's Complaints Procedure. Where it is a complaint relating to standards or conduct it should be reported to the Council's Monitoring Officer.

Schedule A – Ward Referral Procedure	
Effective from	Approved by Council on

- 1.1 Where an application is proposed to be determined by the Head of Development Management under delegated powers, the relevant ward councillor can request that the application be referred to the Planning Committee for further consideration. This is subject to the following:
- The request must be submitted in writing to the Head of Development Management
 - The request must be received no later than 10 clear working days from the validation of the application and its publication on the Council's website.
 - The request should specify one or more reasons why he or she believes the application should be considered by the Planning Committee, this should normally highlight issues raised by their local residents. The ward councillor would normally be expected to make representations to this effect to the Committee
 - The application itself should not be one submitted by the ward councillor nor should the councillor have a Disclosable Pecuniary Interest or an interest in the matter which in accordance with the Code of Conduct for Members, requires them to withdraw from the meeting.
- 1.2 This scheme applies only to original planning applications and not to re-submitted applications where no substantial change has been made to the original application. It also does not apply to prior approval, certificates of lawfulness, advertisement consent, listed building consent and tree applications. This scheme also only applies where the Council is the body to determine the planning application and not where the Council merely must receive notification and does not determine the planning application.