

PROTOCOL FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

1. A Local Planning Protocol - Background

- 1.1 This Protocol has been prepared as local guidance to the Malvern Hills District Council Members and Officers. It has been prepared after taking into account current advice and examples of good practice elsewhere. It also reflects local circumstances in Malvern Hills District.
- 1.2 The Council's planning policies are adopted in the public interest for the benefit of the whole community rather than for any particular individual or interest group. Decisions are required to be taken in accordance with the Development Plan and having regard to other material considerations. Each planning application is considered on its merits however, planning decisions by their very nature are often contentious with strong contrary views being expressed. Any decision can be the subject of detailed scrutiny or challenge. Failure to follow the recommendations of this Protocol, without good reason, following adoption by this District Council, may be regarded by the Local Government Ombudsman as incompatible with good administration, or have implications for the standing of Councillors and professional Officers.
- 1.3 This Protocol covers the conduct of both Councillors and Officers. Its advice is not restricted only to Councillors because they sit on a Development Control Committee, nor to professional Planning Officers only. It relates to the planning process (including policy formulation and development control) and all Councillors and Officers from Malvern Hills District Council who come into contact with it. It is hoped that this Protocol will foster greater mutual support and understanding between Officers and Members to the benefit of all involved in the planning process. It should also give the public greater confidence that this Council wishes to carry out its planning responsibilities fairly and openly. This Protocol is intended to provide additional guidance in respect of Planning matters over and above the provisions of the Local Code of Conduct. It is also complemented by a separate Protocol dealing with the Conduct for Site Inspections.
- 1.4 This Protocol is set out in the form of a series of headings with a brief outline of the issues involved, followed by best practice advice.

2. Lobbying

- 2.1 Lobbying, or seeking to influence a decision, is a normal and perfectly proper part of the political process. However, it can lead to impartiality being brought into question and the need to publicly declare that an approach of this nature has taken place. Problems could arise if Councillors indicate or give the impression of support or opposition to a development proposal or particular planning application, or declare their voting intention, before a decision is to be taken; to do so without all relevant information and views would be unfair and prejudicial. Lobbying can take place by professional agents as well as unrepresented applicants/landowners. In general terms, the following best practice points and guidance notes apply to both situations. (See Section 3 for more advice on dealing with professional agents).
 - *Care should be taken in expressing an opinion on any planning proposal; Councillors should always indicate that they will keep an open mind until all the facts are known and that they have heard both sides of the argument. Before this stage it is better to restrict themselves to giving procedural advice, directing those who are lobbying to Officers, so that their representations can be included in the Officer's report.*
 - *Councillors who find themselves in a situation which is developing into lobbying should always explain that whilst they can listen to what is said, they are required to keep an open mind and are constrained from expressing a firm point of view or an intention to vote one way or another. Otherwise, they will have to state their position*

at the Committee meeting and not take part in the subsequent decision. (A standard letter to send in response to approaches of this nature is available to Members.)

- *Where a decision will be taken by Committee, explain that all views will be taken into consideration and that the lobbyist may attend to listen to the debate.*
- *Declare any significant contact with either applicants or third parties at the Committee meeting at the beginning of the debate on a particular item and before a vote is taken.*
- *Any discussions with lobbyists should make clear that a Member's comments are personal rather than those of the Council and provisional pending other evidence, consultations and Officer advice.*
- *In the case where some Councillors are members of Parish/Town Councils as well as being District Councillors (refer to Section. 6.), they should always clearly establish in which capacity they are being approached, if subject to lobbying.*
- *If Members choose to visit sites prior to Committee, they must have regard to the principles outlined above and, in order to ensure openness and fairness, they should consider whether to visit a neighbouring objector's property also. It may be better not to accept invitations to view sites if Councillors believe that this could be used as an opportunity to exert undue pressure by an Agent or applicant.*
- *Without authorisation, Councillors should not negotiate detailed planning matters with lobbyists (see Section 3).*
- *It is perfectly acceptable for a Ward Councillor, or a Councillor who in an official capacity has expert or detailed knowledge of a relevant matter, to address the Planning Committee, or Area Development Control Committees, but it is inappropriate for Councillors to organise support or opposition, or lobby other Councillors informally.*
- *Councillors should ensure that they are not perceived by the public as having prejudged a matter as a result of views expressed on behalf of a political party of which they are a member. Political group meetings should not be used to decide how Councillors will vote on individual planning applications.*
- *Councillors should not act as an advocate or agent for planning applications or planning policy matters to be determined by the District Council. This includes appearing at a Local Plan Inquiry.*
- *Councillors should not put pressure on Officers for a particular recommendation. If any undue lobbying from Councillors takes place officers should inform the Chairman of the Committee and relevant Head of Service and Monitoring Officer.*

3. Application Discussions

3.1 Local authorities are encouraged by the Audit Commission, the Local Government Association and the National Planning Forum, to enter into pre-application discussions with potential applicants. In addition, negotiations and discussions are likely to be ongoing after an application has been submitted. Such discussions can often be interpreted by the public and especially objectors, as prejudicing the planning decision making process. In order to allay such perceptions, application discussions should take place within clear guidelines as follows :

- *Pre-application discussions should generally be conducted at officer level*
- *It should always be made clear at the outset that any discussions are on a 'without prejudice' basis, and where Councillors are involved any views expressed by them are personal and provisional*

- *In the case of advice given by Planning Officers, it should always be made clear that it is always subject to review at a more senior level and the final recommendation lies with the Head of Planning & Housing and not at Case Officer level*
- *Advice given should be consistent; and based upon the Development Plan, Government Planning Policy Guidance and any relevant material considerations*
- *A written note should be made of any meetings and placed upon the relevant file – 2 or more Officers are to attend potentially contentious meetings and a follow-up letter is advisable , at least where documentary material has been left with the Council*
- *Care must be taken to ensure advice is not partial and for the avoidance of doubt should be confirmed in writing*
- *To maintain impartiality, and its appearance, it is preferable that Councillors do not take part in meetings to discuss applications outside the public decision making process. However, if they are so involved they should always be seen to be advised by appropriate professional Officers (always to include a Senior Planning Officer). Councillors' participation in such meetings should be authorised on a case by case basis by the Planning Committee or relevant Area Development Control Committee. The Chairman of the Committee is usually the most appropriate representative, accompanied by local Ward Members where detailed local issues are likely to be discussed*
- *The involvement of Councillors in such discussions should be recorded in any subsequent Committee report*
- *Where there is a long planning history on a site, Councillors are not constrained by the way they have previously voted. Each application is considered on its merits in the light of the prevailing policies and other material considerations.*

4. Declarations of Interest

4.1 Personal and Prejudicial Interests

Councillors must always declare any Personal interests that they (or relative or partner as defined in the Code of Conduct) have in relation to any matter under discussion, and, if there is a Prejudicial Interest as defined under the Members' Code of Conduct, must withdraw from the meeting during consideration of that item.

There are certain limited exceptions contained in the Code of Conduct where a Member may regard an interest as not being prejudicial, such as Membership of another public body. Where a planning application is submitted on behalf of another public body of which the Councillor is also a member (whether as the Council's nominee or otherwise) it is important there should be no perception that the Councillor is favouring that other organisation or considering the application otherwise than on its planning merits. The following advice is given:

In deciding whether it is appropriate to participate in the determination of an application made by another public body of which the Councillor is also a member, regard should be given to:

- *The extent of personal involvement the Councillor has had in relation for the formulation of the development proposals*
- *The degree to which the proposals may be contentious within the local community*
- *Whether members of the public, knowing the relevant facts, would reasonably think that the Councillor's judgement might be prejudiced.*

4.2 Interests of Officers

Any Officer of the Council who has a direct or indirect pecuniary interest in relation to any contract which the Council has or proposes to enter into must declare the fact in writing to the Monitoring Officer, in accordance with Section 117 of the Local Government Act 1972 and the Council's own Standing Orders. The following advice is given:

- *Care should always be taken to avoid any suspicion that an Officer recommendation may have been influenced by improper motives*
- *Any Officer who has a private or personal interest which, in the case of an elected Member ought properly to be declared under the Code of Conduct, should immediately inform their Head of Planning & Housing who, in consultation with the Monitoring Officer, will determine whether the officer should take any further role in relation to that matter*
- *Where an officer is deemed to have such an interest, this should be recorded on the relevant public file and the Head of Planning & Housing should certify that the Officer in question had no influence on the consideration of the matter.*

5. Ward Interests

5.1 The Members' Code of Conduct sets out the standards of conduct required of Councillors in carrying out their duties and in their relationships with the Council and Council Officers. Councillors have a special duty to their ward constituents but their overriding duty is to the whole community.

- *Councillors should not favour any individuals or groups and although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take*
- *Councillors must represent their constituents as a whole.*

6. District And Parish Council Membership

6.1 Conflict of Interests

Some Councillors will be Members of Parish/Town Councils as well as District Councillors. This situation can also present problems where the Parish/Town Council are consulted on planning applications. Whilst the comments of Parish Councils should concentrate on local issues this is often the stage when District Councillors can come under pressure to indicate their support or objection to a particular proposal.

Of particular concern is the potential for a conflict of interest arising when a Member of both Councils votes on an application at a Town/Parish meeting prior to the District's Area Planning Committee meeting. It is quite conceivable that a District Councillor in this position could end up voting in a different way when all the relevant information is made available in the officer's report to the District Council.

In order to avoid this potential conflict, it would be preferable for District Councillors not to serve on Town or Parish Council's planning committees. If they cannot avoid that, then they do not vote or say anything which would create the impression that they have already made up their minds prior to the District Council's area planning meeting. In this way, they will avoid being part of the formal process of submitting representations on planning applications to the District Council, and so demonstrate their impartiality.

Those Members who have taken part in such considerations and discussions at Parish or Town Council level, and especially if they have voted, should declare an interest when the applications come before the District Council Planning Committees and should not take part in their consideration in that forum. (This view was subsequently endorsed by the Council's Executive Board at the meeting on 21st July 1999.)

Some Councillors would prefer to continue to serve on a Parish Council planning committee but not exercise a vote. Others would simply prefer to be able to address the relevant Committee on certain applications. It is, of course, a matter for each District Councillor to decide. The view of the Planning Chairmen is that it is better to keep the two roles entirely separate. The Code of Conduct is a local Code approved by this Council, but failure to comply may be regarded by the Local Government Ombudsman as maladministration.

7. Committee Procedures and Conduct of Meetings

7.1 The procedures governing the conduct of Council meetings is already set out in the Rules of Procedure. However, the general public who attend these meetings will usually not be familiar with the Rules of Procedure and it is therefore extremely important that the impression given is always one of an orderly meeting, where it is clear that decisions are being made on matters which are relevant and that Members and Officers fully understand the reasoning. The following best practice guidelines will assist in this aim:

- *Continue with Chairman's Briefings to be held after the Agenda has been set and Officers' recommendations made*
- *Continue practice of Legal Officer to be present at all Planning Committee Meetings*
- *Continue practice of structured reports to Committee for planning applications setting out all relevant points, development plan policies, site or related history, and other material considerations*
- *Reports on planning applications should always have a written recommendation; oral reporting should be rare (except to update) and carefully minuted where it does occur*
- *Reports should contain a technical appraisal which clearly justifies the recommendation*
- *If the recommendation is contrary to the Development Plan the material considerations which justify this must clearly be stated*
- *Where decisions are to be delegated to Officers or Officers in conjunction with Members, this should be clearly specified and the arrangements detailed in the minutes*
- *Terms of reference of Section 106 Agreements must be discussed openly and recorded in the minutes.*

8. Decisions Contrary To Officer Recommendation

8.1 It is inevitable from time to time that decisions will be made which are contrary to the Officer recommendation. However it is important, so far as the general public and applicants are concerned, that on these occasions the Committee makes clear the reasons for making such a decision at the time. The public must not be given the impression that reasons for refusal or conditions are being imposed on the spur of the moment without proper advice and consideration, as this will defeat the good practice of structured reports, and reasoned written recommendations.

- *Where a Member is minded to move a recommendation which is contrary to the Officer recommendation, to avoid a deferral, in the case of a refusal, clear planning reasons should be given and in the case of an approval, an indication of the acceptable conditions. For the avoidance of doubt, it is possible that the decision could be delegated to the Head of Planning & Housing, in consultation with the Chairman and local ward members if necessary, to finalise detailed wording of reasons or conditions*
- *Where a decision is made contrary to the Officer recommendation, the Head of Planning & Housing may refer the matter to the Planning Committee for consideration, not only because there is a critical policy consideration at stake, but also to seek clarification on conditions or reasons for refusal if necessary*
- *The Minutes of the relevant Committee / Sub Committee should always include a detailed Minute explaining why an Officer recommendation was rejected and a copy of this should be placed on the planning application file.*

9. Delegation To Officers

- 9.1 In recognition of the duty to determine applications as efficiently as possible and within specified Government targets, a Scheme of Delegation to the Head of Planning Services has been approved. The Scheme is quite extensive and includes authority to approve with or without conditions, or refuse all types of applications where observations or objections are either of a minimal nature, not material or non-substantive. In practice, Ward Councillors are able to request that any application be considered by the relevant Area Planning Committee.
- *Councillors are advised to state their reasons for requesting that an application be considered by committee when the matter is debated in open hearing*
 - *The practice of listing delegated decisions in Planning Bulletins is to continue.*

10. Conduct of Officers

- 10.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through a Council or Committee decision. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each other's positions.
- 10.2 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. This Code obliges RTPI members to professional and independent recommendation. [A copy is available for inspection from the Head of Planning Services]. Not all Planning Officers are members of the RTPI and terms and conditions of service are also relied upon to govern the conduct of officers employed by the Council.
- *Planning Officers who work closely with Councillors have to ensure that their professional judgement is not compromised by the nature of their professional relationship with Member*
 - *Planning Officers representing the Council in circumstances where the decision taken was contrary to advice will represent the Council to the best of their ability without prejudice to their professional integrity.*

11. Development Proposals submitted by Councillors and Officers, Council Development and the Council as an Enabler

- 11.1 The advice in this Section applies to both planning applications and Development Plan policy matters:
- *Serving Councillors and Officers should never act as agents for people pursuing a planning matter with their Authority. Should they submit their own proposals or where applications are made by family members to the Authority they serve, they should declare the interest to the Monitoring Officer and take no part in its processing*
 - *Such proposals and the fact that a declaration of interest has been lodged should be identified on the relevant planning files*
 - *Proposals of this nature should be reported to the relevant Area Planning Committee and not dealt with under delegated powers.*
- 11.2 The decision making process for proposals relating to Council owned land or, development the Council is otherwise promoting / enabling can be open to criticism on the basis that the Council may find it difficult to separate its roles as both developer, enabler and Planning Authority. It is important that this distinction is clearly made and that there is a process in

place to ensure that planning decisions are made entirely on their planning merits and not for other reasons.

- *Development proposals by the Council are to be treated in the same way as those by private developers, particularly in relation to Officers' advice.*
- *Where a Council development is being considered, Councillors who have been involved in the decision to seek planning permission (eg. Members of the Executive Committee) and who are also members of the relevant Area Planning Committees should declare a 'corporate' interest when the planning application comes up for determination. In such cases, Councillors are usually still entitled to take part in the debate and vote. The exception to this could be in the case of an Executive Portfolio Member that has been closely involved in negotiations with developers in working up a proposal that needs planning permission*
- *Any officer involved in the processing and determination of such applications should have played no part in the initiation of the proposals. The Executive Committee may seek the advice of the Head of Planning & Housing on relevant planning matters and general policy considerations, but it is important that the merits of a particular application are not considered by the Executive Committee.*

12. Training

12.1 Training on planning procedures and issues, particularly new or changed policies and procedures, will be provided each year and will include events presented by Officers with help from external specialists where appropriate.

- *With effect from 23rd April 2003, Members shall not serve as members of Area Development Control Committees unless they have undergone annual induction training on planning matters, including the Code of Conduct and Planning Protocol. All Members involved in the determination of planning applications should also attend the other events described above.*
- *Planning Officers responsible for the preparation of written reports and for advising Members will be qualified to an appropriate level and will be required to undertake continued professional development training in accordance with that which may be stipulated by their respective institutions.*

13. Hospitality

13.1 Advice on hospitality and offers of gifts or favours is given in the Council's separate protocol dealing with those matters. The Protocol for Site Visits of Planning Committees makes it clear that no hospitality should be accepted on those occasions.

- *Councillors are advised to treat with extreme caution any offer or gift, favour or hospitality which is made to them personally*
- *Gifts (other than purely token and / or trade items such as calendars and diaries) delivered to Council offices in person or by post should be politely returned or given to Charity as the Head of Service may decide is most appropriate.*

14. Dealing With The Media

14.1 There will at times be direct contact and pressure from the Media. Members and Officers, when commenting on planning matters should:

- *Have regard to the points outlined in the Section on Lobbying and this Code in general.*
- *Make clear that they will retain an open mind until such time as the full facts are available and these are debated by the appropriate Committee of the Council. It is*

extremely important that Members do not give an impression that they have made up their mind about a planning application before the full facts are known

- *Make clear that any views expressed are personal and not offered on behalf of the Council, unless they are made as the authorised spokesperson on a particular matter.*

15. Review And Monitoring

15.1 The effectiveness of this Protocol will be monitored in the following ways:

- *regular reports to the Standards Committee on formal complaints made under the Council's complaints procedure, and where the Ombudsman has decided to investigate*
- *regular monitoring of planning files to ensure complete and accurate record keeping.*

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