
Peak District National Park Authority



ANNEX 1

PROTOCOL ON PLANNING

DEVELOPMENT CONTROL and PLANNING POLICY

March 2008

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1 Background

- (a) The Local Government Act 2000 introduced a new ethical framework for local government with the establishment of the Standards Board and a requirement for local authorities to adopt a Members' code of conduct and appoint a Standards Committee. The current code was introduced in 2007.
- (b) The Members' code of conduct addresses in general terms the aspects of a Member's conduct in carrying out the whole range of official duties and has direct relevance to the conduct of Members in relation to their involvement in the planning system.
- (c) This protocol seeks to relate the general provisions of the code specifically to development control and planning policy but goes beyond the probity concerns of the code. The protocol applies to the determination by the Authority of planning applications and enforcement matters and the formulation of planning policy through the development plan process and any other supplementary policy guidance.
- (d) The Protocol is not intended to restrict Members' fair and objective communications with the local community on planning matters but should be seen as detailed guidance and advice. Its aims are to assist Members and officers in ensuring the preservation of the integrity of the planning system as open and fair to all in any dealings with interested parties on planning matters and at any meetings of the Authority where these are being considered.

2 Introduction

- (a) Town and Country Planning relies on informed judgement within a firm policy context. It is highly contentious because decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. The key purposes of the planning system are to steer and control development in the public interest. It necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their setting. It is important therefore that the Authority should make decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.
- (b) Members and officers are both involved in operating the planning system. The successful operation relies on mutual trust and understanding of each other's role. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

3 Role of Officers

- (a) The function of officers is to advise and assist Members in matters of planning policy and in their determination of planning applications and enforcement issues by:

- providing impartial and professional advice;
 - making sure that all the information necessary for the decision to be made is given;
 - providing a clear and accurate analysis of the issues;
 - using adopted policies and guidance as starting and reference points for decision making;
 - setting applications and enforcement issues against the relevant Development Plan policies and national policy guidance;
 - taking into account all other material considerations;
 - giving a clear recommendation;
 - carrying out the decisions of the Authority made in Committees or Sub-Committees.
- (b) Where officers are exercising delegated powers in accordance with Standing Orders they will:
- act fairly and openly;
 - approach each case with an open mind;
 - use adopted policies and guidance as starting and reference points for decision making;
 - carefully weigh up relevant issues;
 - determine each case on its own merit;
 - ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

4 **Officers Discussions with Applicants**

Pre-application meetings or other meetings with applicants are encouraged to ensure beneficial development, to resolve matters which might otherwise lead to the refusal of planning permission, or to advise that permission is unlikely to be granted. However, to avoid such meetings being misunderstood, they should normally be at officer level and:

- where possible meetings should be held at the Authority's offices;
- potentially contentious meetings will be attended by at least two officers, including the Head of Planning or his/her representative;
- it will be made clear at the outset that the discussion will not bind the Authority to making a particular decision and that any views expressed by the officer are provisional;

- advice will be consistent and based upon the Development Plan and material considerations. There should be no significant difference in the interpretation of planning policies among planning officers;
- a note of the discussion, including site meetings will be taken and placed on file and made available for public inspection at the appropriate time;
- a note of any meetings with objectors will also be taken and placed on the file;
- for major or contentious applications a follow up letter will be sent by officers re-emphasising the non-binding nature of discussions.

5 **Officers' Reports to Committees**

- (a) Decisions on planning applications have to be taken in accordance with planning law and in particular s38(6) of the Planning and Compulsory Purchase Act 2004 which states that the determination must be in accordance with the development plan unless material considerations indicate otherwise.
- (b) Officers' reports to the Planning Committee will refer to:
 - the planning history of the site;
 - the proposal;
 - the substance of any written comments and representations received;
 - the comments of consultees;
 - the relevant policies and guidance applicable to the application;
 - any other material considerations;
 - a professional appraisal of the application which clearly justifies the recommendation;
 - any material considerations that justify a departure from the development plan;
 - a clear recommendation.

6 **Site Visits**

- (a) Site visits by Committee Members are useful to identify features of a proposal, which may be difficult to convey in a written report, but site visits do delay the decision on an application and should only be used where the expected benefit is substantial. Each request for a site visit should be considered against this criteria.
- (b) Cases may be referred to a site visit by Members at a formal meeting or by officers who may judge that a Member site visit is the most appropriate means of ensuring Members get a clear understanding of the proposal and the issues raised.
- (c) Where Members in Committee agree to carry out a site visit the reasons for the decision will be recorded in the Minutes of the meeting.

- (d) Site visits will be carried out in accordance with the agreed procedures and are:
- fact finding exercises;
 - to enable officers to point out relevant features;
 - to enable Members' questions of fact to be asked on site for clarification;
 - not part of the formal consideration of the application and therefore public rights of attendance do not apply.
- (e) Discussion on the application will only take place at the subsequent Committee meeting, as all relevant parties may not be in attendance on site.

7 **Role of Members**

- (a) Members set the Authority's planning policy and except where these are delegated to officers, determine planning applications and enforcement issues within the context of that policy. It is a requirement of the Members' code of conduct that Members must not in their official capacity use their position improperly to confer on or secure for themselves or any other person an advantage or disadvantage.
- (b) When Members come to make a decision on a planning matter, they must:
- act fairly and openly;
 - approach each case with an open mind;
 - use adopted policies and guidance as starting and reference points for decision making;
 - carefully weigh up relevant issues;
 - determine each case on its own merits;
 - ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

8 **Group Decisions**

Although National Park Authorities are non-political organisations Members need to be aware of the potential for attempting to influence the determination of an application. Members cannot accept an instruction from anyone to determine an application in a particular way, as they must determine the issue on its merits. So, while they may give appropriate weight to the views of other Members whether expressed in the Committee Meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. As a result it is not appropriate for any group of Members to instruct Members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any Member who voted contrary to the group's collective view. If such instructions are given Members should declare it in exactly the same manner as they would declare any other attempt at lobbying.

Lobbying

- (a) Lobbying is a normal and perfectly proper part of the political process and it is quite common for applicants or other interested parties to want to discuss a proposed development with Members, or distribute written material to Members before a planning application is determined. This can help Members' understanding of the issues and concerns associated with an application.

- (b) Unless care and common sense is exercised by all the parties involved such lobbying can lead to the impartiality of a Member being called into question. Members are under an obligation to determine matters on their merits. That means that they must not make up their minds before receiving and reading the officer reports and before hearing all proper debate on the matter out of which new information may arise. It follows then that if a Member states his/her support for, or opposition to, a proposal before the matter is formally considered at the Committee meeting, he/she cannot claim to retain an open mind on the issue and to be prepared to determine it on its merits.
- (c) To avoid compromising their position in making a decision before they have received all the relevant information, Members must:
- take care in any contact with interested parties, particularly when meeting them alone, to ensure they are not unduly influenced in any way by one party or another and to avoid making it known in advance whether they support or oppose the proposal. If possible any meetings with Members should be arranged by and attended by an appropriate officer.
 - not advise applicants, their agents or objectors on the likely acceptability of planning proposals;
 - restrict their response to giving procedural advice and listening to concerns and views;
 - direct lobbyists or objectors to planning officers, who will include reference to their opinions, where relevant, in their report;
 - not organise support for or against a planning application;
 - not lobby other Members;
 - not discuss the merits or otherwise of any planning proposals with officers outside the Committee meetings and any discussions shall be restricted to matters of fact and the mutual exchange of relevant information;
 - not pressurise officers to make a particular recommendation in their report contrary to their professional view or use undue pressure to seek to persuade an officer to withdraw a report;
 - not circulate unofficial papers to other Members or at Committee meetings;
 - advise the Head of Planning and the Chair of the appropriate Committee of the existence of any lobbying interest.
- (d) Where a Member has been lobbied, he/she should report to the relevant Committee that he/she has been lobbied and by whom. However, Members must act in the public interest and not at the behest of any individual or interest. If the Member feels that he/she no longer retains an open mind on the matter, but that his/her impartiality has been compromised, he/she will need to decide whether to withdraw from the meeting and take no further part in the decision making process. Failure to withdraw from the meeting in these circumstances can lead to an accusation of bias or predetermination that may constitute mal-administration that could invalidate the decision.

- (e) Care should be taken by Members before introducing new information into the debate at the Committee as that might lead to consideration of an application being deferred or the Committee taking a decision on the basis of information which subsequently proves to be incorrect. Where a Member receives relevant information in respect of an application which is not contained in the Committee report whenever possible the Member should advise the Head of Planning directly so that the information can be confirmed before the Committee meeting.

10 Membership of a Lobbying Group

A personal interest will arise if a Member is also a member of a lobby or campaigning group that makes representations about an issue that comes up for discussion or decision at a Planning Committee or other Authority meetings.

Members should declare the existence and nature of the personal interest at the meeting so that members of the public are informed about interests that may relate to their decisions. Members can continue to participate unless the interest is also prejudicial in which case Paragraph 15 of this protocol will apply.

A Member will not have a prejudicial interest in a planning proposal which the Member and a lobby group have campaigned against if the Member or the lobby group are not financially affected by the proposal.

However a Member should still consider the general test for personal and prejudicial interests (whether a reasonable member of the public who knows the relevant facts would think it likely that the Member's judgment of the public interest would be prejudiced) and whether there is any other reason why they should not participate in the decision including bias.

A prejudicial interest will arise if the matter will have a direct impact on a lobby or campaign group such as an application from the group for planning permission or grant aid.

More detailed guidance is contained in the Standards Board publication "Guidance for Members on Lobby groups, dual-hatted members and the Code of Conduct" and the Factsheet "Lobby Groups and declarations of interest under the Code of Conduct".

11 The Representative Role

Members may represent the views of constituents and communities at a meeting. However Members must ensure that in representing those views they are not influenced by those views, that they retain an open mind on the matter and remain impartial in the decision making process. If a Member feels that they have been influenced by those views and can no longer remain impartial they must withdraw from the meeting to avoid an accusation of bias or predetermination.

A Member with a prejudicial interest under the code of conduct can represent the views of constituents and communities at a meeting where that part of the meeting is open to the public. The Member must withdraw from the meeting after making the representation.

Another Member of a committee can represent the views of constituents or communities on behalf of a Member in the following circumstances:

- where a Member withdraws from a meeting to avoid an accusation of bias or predetermination; or
- where a Member with a prejudicial interest decides to withdraw from the meeting;

The Member should advise the constituents or community representatives that he/she

intends to withdraw from the meeting and that the other Member will represent their views on the issue.

When representing the views of constituents or communities in these circumstances the other Member should make it clear to the committee that he or she is acting in place of the Member who has withdrawn from the meeting.

12 Membership of another Local Authority

There is nothing in the code of conduct which prevents dual-hatted Members speaking and voting at both parish or district tiers and then at an Authority meeting on the same planning issue. Members who take this course will need to declare their membership of the parish or district council as a personal interest at the Authority meeting if they intend to speak on that matter. Generally this will not constitute a prejudicial interest.

Members are under a legal obligation to approach decision-making with an open mind, prepared to listen to all sides of the argument. Dual-hatted Members who choose to speak and vote at parish or district level and also at the Authority meeting will need to make it very clear that their vote at parish or district level represents a preliminary view and that they will reconsider the matter afresh at the Authority meeting. Failure to do this may lead to a legal challenge of the Authority's decision on the grounds of predetermination.

If an issue comes up for discussion at the parish or district level a Member should:

- at the parish or district level, make it clear that they will reconsider the matter at the Authority meeting taking into account all relevant evidence and representations at that meeting;
- at the Authority meeting if they intend to speak on the matter declare a personal interest arising from membership of the parish or district council and make it clear that the parish or district council's view is not binding on them and that the matter is being considered afresh. If they do not intend to speak on the matter there is no need to declare a personal interest.

An application by a Member's local authority will give rise to a prejudicial interest as membership of that authority will be included in the Register of Interests and it is unrealistic to expect a member of the public to believe that a Member would disregard the interests of the other authority and would therefore think that a Member's judgment is likely to be prejudiced.

13 Applications within a Member's Neighbourhood

Where a Member lives in a part of the Authority's area which will be particularly affected by a planning application a personal interest will arise if the application affects, the well-being or financial position of the Member, or their family, or people with whom the Member has a close personal association, including their employers, firms or companies of which they are partners or directors more than it would affect the majority of people in the Authority's area.

This will be a prejudicial interest if a member of the public, who knows the relevant facts, would reasonably think the Member's personal interest is so significant that it is likely to prejudice their judgment of the public interest. Members should clearly act in the public interest and not in the interests of family or friends. Clearly the closer the relationship, the more likely it is that a prejudicial interest will arise.

An interest shared by a Member with very few other people living in the same area is much more likely to prejudice the Member's judgment than an interest that affects many people living in the area.

The Member needs to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation. They must also particularly consider how the circumstances are likely to impact on their judgment of the public interest.

The mere existence of local knowledge or connections within the local community will not normally be sufficient to meet this test. There must be some factor that might positively harm a member's ability to judge the public interest objectively.

14 Planning Applications by Members or Officers

- (a) The impartiality of the planning process requires particular care when dealing with an application by anyone who might ordinarily be involved in that process. Whenever any Member or officer submits an application to the Authority for himself/herself or on behalf of any other person, they must inform both the Head of Planning and the Authority's Monitoring Officer and not take part in processing or determining the application.
- (b) The Head of Planning will ensure that all such applications are determined at the appropriate Committee Meeting and not under any delegated powers. The consideration of such a proposal from a Member would be considered as a prejudicial interest for that Member under the code. The Member may make a representation to the meeting under the same procedures that apply as set out in para 15 below.
- (c) A Member or officer shall have the same rights as a member of the public in discussing their proposal with a planning officer in advance of consideration by a Committee.
- (d) Consideration by the Planning Committee of a planning application from a Member of the Authority does not automatically give rise to a personal interest for other Members of the Authority. The Standards Board's view is that there must be a closer personal association with that Member such as friendship or a business relationship that is outside the usual day to day working contacts and relationships normally expected between Members of local authorities. The same principles will apply to an application from an officer of the Authority. If there is such a close personal association a prejudicial interest may arise as the well-being or financial position of the Member or officer is likely to be affected more than the majority of the inhabitants of the Authority's area. A member of the public, who knows the relevant facts, would reasonably think the Member's personal interest is so significant that it is likely to prejudice their judgment of the public interest.

15 Participating when a Prejudicial Interest arises

Where a prejudicial interest arises under the code of conduct in the circumstances mentioned in the preceding paragraphs a Member with a prejudicial interest is allowed to make a representation to a meeting if that part of the meeting is open to the public. The Member must withdraw from the meeting after making the representation. The Authority's Standing Orders deal with the procedures, including a requirement that advance notice to speak must be given by the Member in these circumstances.

16 Planning Applications by the Authority

The Authority itself requires planning permission to carry out or authorise development on land it owns. These applications will be treated in the same way as those from private applicants in accordance with the Town and Country Planning General Regulations. Members will not need to declare a personal interest solely because of their membership of the Authority.

17 Decisions Contrary to Officer Recommendations

- (a) From time to time, Committee Members will disagree with the professional advice given by the Head of Planning. Development Control is not an absolute science and there can be genuine disagreement about the implications of a particular proposal. Officers will be present at the Committee making the decision and will be able to advise if the facts simply cannot support the conclusion that the Members have drawn and the Committee is in danger of acting unreasonably.
- (b) In cases where the Committee decides for good and valid reasons to depart from the officer's recommendation, the Committee must define the reasons for rejecting the officer's recommendation and those reasons must be recorded in the minutes of the meeting.
- (c) Where it is not possible for the Committee to define those reasons with sufficient precision at that initial meeting, the Committee should defer the determination of the application to permit the appropriate officers to assist in presenting to a subsequent meeting a statement of draft reasons for refusal, or draft conditions for approval, of the application.
- (d) In these circumstances where an appeal arises against a decision to refuse an application, officers will represent the views of the Authority at the appeal. The Committee may be requested to agree to Members giving evidence at the appeal on the reasons for the Committee's decision. Officers will give support to the relevant Committee Members in preparing such evidence.

18 Review of the Decisions Taken

On a regular basis the decisions taken by the Planning Committee will be monitored by the Head of Planning in consultation with the Chair and Vice Chair of the Planning Committee. This review will include examples of cases on planning and listed building applications; permitted departures; planning appeals; and enforcement cases. Any need to reconsider any policies or practices as a result will be reported to the appropriate Committee.

19 Planning Policy

- (a) Many of the aspects of this Protocol that are relevant to planning applications, in particular, declarations of interest, meetings with interested parties and lobbying, are equally relevant to the formulation of planning policy through the development plan process and any other supplementary policy guidance.
- (b) At all stages in the preparation of policies for the development plan or any other planning guidance:

- officers will consider Government policy guidance and other legal requirements as the basis for policies;
- more than one officer will be involved in the development of any one area of policy;
- where possible more than one Member will be involved at formal consultation events;
- Members appointed to Committees and Advisory Groups dealing with policy issues will reflect the balance between local and national viewpoints;
- Members of the Plans Review Task Team will be consulted at appropriate stages on the Authority's statutory plans and some consultation papers on planning and other relevant land use policies.
- all representations on draft policies will be recorded and analysed. The records of these together with the Authority's response will be placed on public deposit at key stages in plan production;
- the Development Plan will be formally approved and adopted by a meeting of the National Park Authority;
- advice given to Members of the Authority on the interpretation of policies will be copied to the Chair and Deputy Chair of the Authority.

20 **Public Participation at Committee Meetings**

The Authority has procedures that ensure that where it receives representations from or on behalf of an applicant or from members of the public on a particular application or on any other planning matter there is an opportunity for advocates both for and against the proposal to attend and present their views at the Authority's meetings.

21 **Records**

Records on planning applications, enforcement and development plan matters should be complete and accurate. Every file shall contain an accurate account of events so that someone who has not been involved in the process can understand what the decision was and why and how it was reached. Where matters have been determined by officers under delegated powers those decisions will be as well documented and recorded as those taken by Members in a Committee meeting.

22 **Gifts and Hospitality**

Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process and acceptance of gifts or hospitality by Members or officers can be a very serious criminal offence. Both should not behave in a way which might be taken as indicating that they are open to such offers. They should have particular regard to the provisions of their respective codes of conduct and any guidance issued. There is also a requirement to declare to the Monitoring Officer any offers of gifts or hospitality whether accepted or declined.

A Member must also register in the Register of Member's Interests any gift or hospitality with an estimated value of at least £25. Such a gift or hospitality is a personal interest and must be declared at a meeting if the business relates to or is likely to affect the interests of a person who has given the Member the gift or hospitality. The obligation to declare that personal interest at a meeting ceases after a period of three years from the date of registration.

23 **Complaints**

- (a) Any complaints arising out of the operation of this Protocol will be considered by the Authority's Monitoring Officer. Where necessary a report will be considered by the Standards Committee which will keep under review the operation of this Protocol.
- (b) Complaints alleging a breach of the Members' code of conduct will be handled in accordance with the relevant statutory regulations and procedures under the Local Government Act 2000.

24 **Advice**

The Authority's Monitoring Officer and Deputy Monitoring Officer and Heads of Law will give advice on the interpretation and operation of this Protocol.

25 **Review**

The operation of the Protocol shall be monitored and reviewed and any appropriate amendments made when necessary.

Adopted by the National Park Authority Meeting on 28 March 2008