

SUSSEX and SURREY ASSOCIATIONS OF LOCAL COUNCILS

PLANNING PROTOCOL: 5 April 2018



1. Introduction

The role of town and parish councils in the planning system

Town and parish councils are elected bodies which have an important role in the planning system. This role is growing with the Government’s “localism “agenda. They have a legal right to be consulted on all planning applications submitted in their area and to be consulted on all planning policy documents produced by the district/borough, county and unitary councils, and national park authorities covering their area. Town and parish councils now have new powers to prepare neighbourhood plans which, when made, become part of the statutory development plan for the area and strongly influence decisions on planning applications. They also enjoy a “community right to build” engaged by a procedure similar to the adoption of a neighbourhood plan. Town and parish councils can also undertake local conservation and enhancement works and invest in local infrastructure.

In some smaller rural parishes, there are parish meetings rather than elected councils. Parish meetings are a form of direct –rather than representative – democracy, whereby any local elector can attend and participate in discussion and decisions on matters affecting the parish. The guidance in this protocol applies equally to parish meetings.

The purpose of this protocol

This protocol provides guidance to town and parish councils in Sussex and Surrey on how town and parish councils, and individual councillors, should conduct themselves on planning matters and makes this guidance publicly available. The protocol is available simply for reference.

It should be read in conjunction with your town or parish council’s Code of Conduct (see below) and its Standing Orders.

The protocol will be reviewed in due course to reflect any changes in planning legislation and feedback on the use of the protocol from users in Sussex and Surrey.

2. Background

Relevant planning legislation

The planning system in England is based upon a large body of legislation which is subject to regular review and amendment by Parliament. The system is continually evolving. The main items of legislation currently governing the system are:

- The Town & Country Planning Act 1990 (as amended)
- The Town & Country Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)
- The Town & Country Planning (General Permitted Development) Order 2015 (as amended)
- The Town & Country Planning (Use Classes) Order 1987 (as amended)
- Town & Country Planning (Control of Advertisement) Regulations 2007
- Town & Country Planning (Local Planning) (England) Regulations 2012
- The Localism Act 2011 (as amended)
- The Neighbourhood Planning (General)Regulations 2012 (as amended)
- The Town & Country Planning (Development Management Procedure)(England) Order 2015 (as amended)

This is not an exhaustive list. There are many other items of UK and European legislation which bear upon planning decisions. Please note that the legislation is subject to regular amendment.

Government planning policy as set out in the National Planning Policy Framework, accompanied by the National Planning Practice Guidance, is a material consideration in planning decisions, alongside the legislation indicated above.

Other relevant legislation

Operation of the planning system is also affected by wider UK legislation such as the Human Rights Act 1998; Data Protection Act 1998 and the General Data Protection Regulation; the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and the Equality Act 2010. This legislation will also bear on how town and parish councils conduct their business on planning (and other) matters. Town and parish councils should already be aware of their duties and obligations under these items of legislation.

Conduct in public office

The Nolan Committee (1995) on standards in public life established the following seven principles to govern the conduct of anyone who is in public office, whether elected, appointed or employed. These principles should guide behaviour on planning matters.

- **Selflessness:** Holders of public office should act solely in terms of the public interest.
- **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so
- **Honesty:** Holders of public office should be truthful.
- **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Town and parish councils must have an adopted Code of Conduct under the Localism Act 2011. Such codes are based on the Nolan principles and govern the standards of behaviour expected of their councillors. The rules on behaviour will always apply to you when acting as a councillor. You cannot choose not to be covered by the code of Conduct, for example acting as a private individual.

Declarations of interest

All councils maintain a register of interests for councillors where, at least, disclosable pecuniary interests are recorded, following election or appointment. Where a planning matter occurs, which is related to a previously registered, or other personal, prejudicial, or disclosable pecuniary interest, it should be declared by the councillor at the meeting.

Following such declaration, the councillor should either leave the meeting whilst that matter is discussed and voted upon (this is preferable) or, if the Code of Conduct permits, remain in the room, but should play no part in the discussion, debate and voting.

Sometimes such an interest may be minor or have only a tenuous link to the matter under discussion. In such cases, the councillor should raise the matter with the Clerk and seek guidance on whether it is sufficient to be declared and affect participation.

Dual membership

Sometimes councillors sit on both town/parish councils and local planning authorities (districts/boroughs, counties, unitaries and national park authorities). This can raise concerns and complications where a planning matter is discussed at both levels.

At the town/parish council level, the “two-hatted” councillor should consider planning issues from that viewpoint. If the same matter - such as a planning application- goes onto a local planning authority for decision, the councillor should not be confined by the town/parish view. They are not “delegates” to the higher level authority or “mandated” to follow the town/parish view. They should consider the matter afresh from a local planning authority viewpoint, having regard to the development plan and all material planning considerations. This will often include information, consultee responses and professional officer assessment which were not available to the town/parish council at an earlier stage in consideration of the application. Thus, the two roles are different, but complementary.

Applications made by a town or parish council will engage the interest provisions of the Code of Conduct, when they are considered by the local planning authority.

The role of clerks and their relationship to elected members

The role of town or parish council clerk is to ensure that the Council as a whole conducts its business properly and to provide independent, objective and professional advice and support. The clerk is there to serve the council as a whole and not to advance or hold back the views of any individual councillor. Where planning matters are complex and divisive in the local community, this role can be difficult and demanding. Councillors should treat the clerk with respect and consideration in carrying out their duties.

3. Planning applications

Pre-application discussions and other meetings with developers

Discussions between the landowners and developers promoting development, and local planning authorities, town and parish councils, and local communities, prior to the formal submission of a planning application can be useful for all concerned. In particular, they can result in better quality applications which take into account local views. As such, they are strongly encouraged by the Government. However, if held in secret, they can cause concern, controversy and speculation, getting development proposals “off on the wrong foot”.

Wherever possible, pre-application discussions at the local level should be held in public. The best way to do this is some form of public meeting or exhibition where people can see and comment upon initial development ideas, and local councillors can also attend. If the developer/landowner wants to talk direct to the town/parish council, this should be in a meeting which is also open to the public, with discussion and debate recorded in the normal way through published minutes. The guidance below on “pre-disposition” and “pre-determination” is also relevant here.

Where, exceptionally, the developer /landowner insists upon a private meeting with the town/parish council (for example if matters of commercial confidentiality are unavoidably to

be discussed), the town/parish needs to decide whether the benefits of such a meeting are likely to exceed the risks arising from lack of openness. It is often useful to discuss such requests with your local planning authority, so that any actions are co-ordinated. The town/parish council may decide to decline a private meeting in favour of an open meeting. However, if a private meeting does go ahead, it is wise to seek agreement in advance to publication of a jointly agreed post-meeting statement: this may allay some of the concerns in the local community over a “secret meeting” and avoid a vacuum which the local rumour mill will be only too eager to fill. You will also need to consider whether to open up such a meeting to all town and parish councillors, rather than a selected few such as members of a planning committee.

Planning applications submitted by councillors, officers or town/parish councils

Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Such proposals could be planning applications or local plan proposals. They must be handled in a way that gives no grounds for accusations of favouritism. Accordingly, national guidance on “Probity in Planning” advises :

- if a councillor submits his or her own proposal to the local planning authority, he or she should play no part in its consideration by the town or parish council
- a system should be devised to identify and manage such proposals
- such proposals should be reported to a public meeting of the town or parish council rather than any other channel

Applicants in such cases have the same rights as any other applicant, but the councillor, as applicant, should also not seek to influence improperly the decision. Proposals for a council’s own development should be treated with the same transparency and impartiality as those of private developers.

Consultation on planning applications

In the great majority of cases, consultation and public engagement on planning applications will be undertaken solely by the local planning authority. It will approach neighbouring residents and businesses , and statutory and other consultees, to seek views.

Exceptionally, the town or parish council may wish to supplement local planning authority consultations by arranging its own events at the local level, such as public meetings or exhibitions on planning applications which are particularly important or controversial. In such cases, the town or parish council should avoid setting up separate and parallel consultation arrangements which will cause confusion to the public. It is usually best to advise people to submit their comments on the application direct to the local planning authority via the channels, and within the timescale, the latter body has set. If required, the town or parish council can be copied in to such comments.

Site visits

As a matter of course, the local planning authority's case officer will visit application sites at least once prior to a decision. If individual town or parish councillors wish to make a site visit, they can do so, but only using public vantage points (land with public access, public highways or rights of way). Members of town and parish councils have no special rights of entry to private land without the owner's consent.

If individual members do arrange to visit application sites with the owner's consent, then they should inform the clerk. The guidance below on "pre-disposition" and "pre-determination" is relevant in such circumstances.

If the town/parish council consider that a group site visit to a planning application site should be held, this should be arranged by the clerk, who may wish to seek agreement with landowners to enter private land, if that is necessary. Such arranged site visits should be for the sole purpose of understanding of the application proposals and their relationship to the wider environment. They are not an opportunity for lobbying by either the promoters of, or objectors to, the development.

Pre-disposition and pre-determination

As indicated below on lobbying, councillors should be open-minded and generally avoid "pre-determination": this is taking a conclusive view on planning applications before a councillor has seen all the information or heard all the arguments at a committee meeting. This is not the same as "pre-disposition", which is being inclined to a particular viewpoint, either for or against a planning application, but still open to changing his/her mind if new information or arguments come to light. It is entirely proper for a councillor to be predisposed to a particular viewpoint (for example, "I am worried about the access arrangements and the impact on the landscape" or "I welcome the new jobs provided by this development") whilst still being open to opposing arguments about the application.

As a councillor, you must demonstrably keep an open mind.

Lobbying of councillors

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision will often seek to influence it through an approach to their local councillor. This is local democracy in action.

Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

It remains good practice that, when being lobbied, and listening carefully to what people say, councillors (members of the planning committees in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already conclusively made up their mind on the issue before they have been exposed to all the evidence and arguments.

Councillors should never accept any hospitality or other inducements from lobbyists which would put them in a position where they owe an obligation, or might reasonably be considered to have done so. Individual councils' Codes of Conduct will provide more detailed guidance on this matter.

Lobbying by councillors

Naturally, town and parish councillors talk amongst themselves about planning applications in their area. However, the following guidelines should be observed to maintain probity:

- Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be seen as maladministration.
- Councillors should in general avoid organising support for or against a planning application, and avoid lobbying other councillors.
- Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
- Once the town or parish council has considered a planning application and made its views known to the local planning authority, it may lobby or campaign for a particular outcome

Consideration of applications at town and parish council meetings

This will normally be governed by the individual town or parish council's standing orders. These will usually cover matters such as presentations by officers, debate by councillors, proposing and seconding motions, voting, and recording decisions and recommendations.

In framing their comments on planning applications to the local planning authority, town and parish councils should focus on relevant planning policies and other material planning considerations, backed as far as possible by evidence. It is not simply about following the views of those who are shouting loudest.

As a councillor, you should always act fairly between applicants and objectors.

Format of responses on planning applications to local planning authorities

When responding to local planning authority consultations on planning applications, it is helpful if the town or parish council responses are recorded and submitted in one of the following formats:

- **No objection** or **no comments** (neutral)
- **Support** with reasons set out as clearly as possible (positive)
- **Object** with reasons set out as clearly as possible (negative)

The Council is under an obligation to give reasons for its decisions.

Representation at local planning authority planning committees

Local planning authorities normally offer an “opportunity to speak” where interested parties – including town and parish councils- have 2/3 minutes to express their views to the planning committee at the point of decision on the planning application.

A town or parish councillor representing their organisation should normally be an ex-officio appointee (such as chair of the town/parish council or its planning committee) or another person expressly appointed for the task by the town/parish council.

Other town/parish councillors can use the “opportunity to speak”, but should make it clear that they are speaking in a personal capacity and that their views may not necessarily represent those of the town/parish council.

Discharge of planning conditions

Many planning applications are subject to the discharge of a number of planning conditions, some of which must be resolved prior to the commencement of development on the application site. Often, such conditions are highly technical in nature , and will be resolved between the applicants and local planning and highway authority officers (for example design of road junctions and sequencing of traffic lights to ensure the smooth flow of traffic) with little or no input from the town/parish council .

If there are planning conditions which are of particular significance to the town/parish council in achieving a satisfactory development, they should ask the local planning authority for the opportunity for consultation and comment on them prior to discharge.

Town and parish councils may assist in monitoring compliance with planning conditions and should inform the local planning authority if they have reason to believe that conditions are not being complied with. The local planning authority will then investigate and consider whether it is expedient to take further action. The guidance below in section 5 on planning enforcement is relevant here.

Planning agreements/unilateral obligations

Often, as part of the planning application process, there will be a requirement for a planning agreement - under section 106 of the Town & Country Planning Act 1990- to be negotiated and entered into between the local planning authority, the landowner and the developer. In some cases, a developer will offer a planning obligation unilaterally (without negotiation), particularly during planning appeals. Such agreements can cover affordable housing; the provision, transfer and subsequent maintenance of community facilities , open space and play areas; phasing of development; highways , education and library contributions.

Town and parish councils have no right to involved in the negotiation and agreement of such agreements (unless they are a landowner), but should seek involvement where they are expected to assume ownership or management and maintenance of property assets. Even if a town or parish council objects in principle to a planning application, it may wish to

consider the community benefits which may accrue from the development on a “without prejudice” basis.

4. Planning appeals

Procedure

Whilst the procedure and timescale for planning appeals is a matter to be determined by the Planning Inspectorate, the appellants, and the local planning authority, town and parish councils have a right to make their views known on the appeal and to take part in any hearing or public inquiry.

There are three types of planning appeal procedure:

- **Written representations** (all parties exchange written comments on the case , which are considered by the Inspector after a site visit)
- **Informal hearing** (all parties submit cases in writing and the Inspector leads a structured discussion on the key planning issues , followed by a site visit)
- **Public Inquiry** (all parties submit written evidence , which is then subject to questioning and debate in a formal inquiry presided over by an inspector, followed by a site visit.

Town/parish council involvement

It is open to the town/parish council to determine its own degree of involvement in any planning appeal in, or affecting, its area. This will depend on the importance of the appeal outcome. Town/parish councils may decide whether to simply re-iterate the comments made to the local planning authority at the application stage or they may decide to amplify and elaborate this in a more detailed submission. In either event, it is good practice to record a decision.

At a planning appeal, the town/parish council normally takes a secondary role, in support of the local planning authority, and there is no need to duplicate the work done by it.

Representation at appeal hearings and inquiries

A town or parish councillor representing their organisation should normally be an ex-officio appointee (such as chair of the town/parish council or its planning committee) or another person expressly appointed for the task by the town/parish council.

Other town/parish councillors can appear at an appeal hearing or public inquiry, but should make it clear that they are speaking in a personal capacity and that their views may not necessarily represent those of the town/parish council.

Town and parish councils should be wary of entering into collaborative arrangements regarding appeals with other persons and organisations, especially private individuals or bodies. The council must consider, and keep under review, what is in the public interest (and not what might benefit the private interests of others), so far as the conduct of any planning

appeal, and subsequent court challenge, is concerned. It must ensure that the expenditure of public funds is proportionate to the public objective pursued.

5. Planning enforcement

Some key principles on planning enforcement

Where development proceeds without the necessary permissions, local planning authorities have a range of statutory powers to remedy breaches of planning control where the development would not, on its individual planning merits, be acceptable. Planning enforcement is essential for the credibility of the whole planning system.

Some key principles on the system of planning enforcement are as follows:

- The first stage in any enforcement case is to establish the facts through careful investigation
- Breach of planning control is not normally a criminal offence (listed buildings and protected trees are an exception)
- Enforcement action is discretionary and local authorities are urged to act proportionately to the impact of any breach on the local environment
- Planning enforcement generally seeks to be restorative (restore things to the previous lawful condition) rather than punish those responsible (although there are fines and even imprisonment if statutory notices are not complied with and the courts are flouted)

The town and parish council role in planning enforcement

Town and parish councils do not have any formal statutory role in planning enforcement. However, the local planning authority will usually welcome the town and parish councils acting as their local “eyes and ears” in reporting possible breaches of planning control or maintaining logs of activity or vehicle movements to assist their work on sites under investigations . In return, it is good practice for local planning authorities to liaise with town and parish councils over the progress of any enforcement cases in their area.

Liaison on enforcement matters is best done through the town/parish clerk and the local planning authority investigating officer. Other “freelance” operations involving individual town or parish councillors can result in tangled lines of communication.

Whilst local planning authorities welcome local town/parish councils and members of the public acting as “eyes and ears” in reporting information, **councillors and local people should never enter a site under investigation or confront persons alleged to be in breach of planning control, or their contractors.** Such situations can be tense, emotional or even dangerous, and are best left to trained and experienced staff at the local planning authority.

6. Development plans

The statutory development plan for an area comprises (a) the local plan prepared by the local planning authority and (b) any neighbourhood plans prepared by the town or parish

council, or constituted neighbourhood forum. Legally, “decisions on planning applications have to be made in accordance with the development plan unless material considerations indicate otherwise” (Planning & Compulsory Purchase Act 2004, section 38(6)), so they have primacy in planning decisions.

The role of town and parish councils in local plans

Town and parish councils are important consultees on local plans and will have the opportunity to comment on the emerging local plan at various stages of its preparation, up to and including the public examination of it by an independent inspector.

It is important that town and parish councils make room for proper consideration of local plans as they will have profound effects on their area. This may require special briefings by local planning authority officers and/or discussion of consultation documents at special meetings unencumbered by lengthy agendas on other matters. All responses to consultation should be carefully recorded and submitted within local planning authority timescales

If a town or parish council wishes to pursue a case through to the public examination on the local plan, it should appoint a councillor (or councillors) to attend and speak on its behalf. Any other councillors wishing to attend and speak may do so, but should make it clear that they are speaking in a personal capacity and that their views do not necessarily represent those of the town/parish council. Alternatively, the town/parish council can decide whether to engage professional support to act on its behalf

Neighbourhood plans

Neighbourhood plans give communities the power to develop a shared vision for the future of their area and decide where new development should be located , what it should look like what infrastructure it needs to support it, and what features of the local environment should be conserved and enhanced. These neighbourhood plans are a statutory document, and – along with the local plan - form part of the development plan, used to determine planning applications in the area.

Town and parish councils may apply to the local planning authority for the designation of all, or part of, their area as a neighbourhood plan area. Following designation, the town/parish council needs to set up appropriate governance and working arrangements for the preparation of the neighbourhood plan. Arrangements will differ from place to place, for example from a market town to a small rural parish.

Governance needs to cover oversight, programming, and the resourcing of work on the neighbourhood plan and eventually deciding whether formally to submit the draft neighbourhood plan to the local planning authority for the later statutory stages, including examination and referendum. This is usually done by elected members of the town/parish council, supported by their clerk, with the “submission draft”, and associated documents, formally endorsed by the council. It is important to remember that the decision-maker on

preparation and submission of the neighbourhood plan is the town or parish council and that it cannot delegate its functions or expenditure to non-council bodies or groups.

Working arrangements can be much more flexible and, as well as local councillors, draw in the talents and energy of the local community to identify and work on the planning issues which are of most concern locally in small groups, with regular consultation and feedback as it moves towards drawing up a neighbourhood plan.

When the neighbourhood plan gets to public examination, the town/parish council must decide how best to argue its case in the face of any formal objections. It should appoint a councillor (or councillors), or professional assistance, to attend and speak on its behalf. Any other councillors wishing to attend and speak may do so, but should make it clear that they are speaking in a personal capacity and that their views do not necessarily represent those of the town/parish council. Alternatively, the town/parish council can decide whether to engage professional support to act on its behalf.

FURTHER READING

- **Probity in planning for councillors and officers** Local Government Association and Planning Advisory Service April 2013
<https://www.local.gov.uk/sites/default/files/documents/probity-planning-councill-d92.pdf>
- **National Planning Policy Framework** DCLG 2012 (The Government published proposed amendments for consultation in March 2018)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf
- **National Planning Practice Guidance** DCLG 2014 (The Government published proposed amendments for consultation in March 2018)
<https://www.gov.uk/government/collections/planning-practice-guidance>
- **The Plain English Guide to the planning system** DCLG 2015
<https://www.gov.uk/government/publications/plain-english-guide-to-the-planning-system>

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