

# South Kesteven District Council

## Development Management

### Scheme of Delegation & Protocols

Under the Council's Scheme of Delegation many operational and administrative matters are delegated to Officers. These Protocols set out how the Officers will exercise these powers to ensure Members have adequate opportunity to comment on and be involved in the decision-making process.

#### Development Management Protocols

##### Planning and Related Applications

Listed below are the circumstances where any planning or related application would be presented to the Planning Committee for decision. The Assistant Director of Planning (ADP), or other duly authorised officer (under the scheme of delegation), will determine all other planning and related applications (see Annex C).

A Member of the Council may request, in writing, that an application be presented to the Planning Committee. Such a request will be made on the forms provided within 21 days of publication of the application on the weekly list giving valid material planning reason(s) for the request. The request must be made by the ward member or adjoining ward in which the application is lodged.

Reference can be made to the Council's Monitoring Officer should clarification be necessary.

##### Matters to be presented to Planning Committee:-

- i. Proposals which represent a material Departure or significantly contrary to the objectives of an approved or statutory Development Plan, and which are recommended for approval.
- ii. Proposals which in the opinion of the duly authorised officer, are contrary to the adopted Statutory Development Plan, standards or guidance when taken as a whole, and which are recommended for approval.
- iii. Proposals which are controversial or likely to be of significant public interest or have impact on the Corporate Priorities (i.e. the environment) in the opinion of the ADP.
- iv. Proposals submitted by or on behalf of the Council for its own developments, or on Council owned land, for Major Development<sup>1</sup> or in relation to all other applications where objections have been received.
- v. Proposals submitted by (including where acting as an agent) or on behalf of a Member of the Council (or his/her spouse or partner or immediate family) or where a District Councillor lives in the adjoining property, a property opposite the application site or a property either side.

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<sup>1</sup> Major Developments are those defined by the Town and County Planning (Development Management Procedure)(England) Order 2015 or by any such other Order or legislation subsequently amending the statutory definition of Major Developments

- vi. Proposals submitted by or on behalf of a member of staff (or his/her spouse or partner or immediate family) or where a member of staff lives in the adjoining property, a property opposite the application site or a property either side.

### **Enforcement**

Listed below are the circumstances where enforcement matters will be presented to the Planning Committee. All other matters will be dealt with by the ADP, or other duly authorised officer.

- i. Where the case involves a Member of the Council (or an immediate relative) or any employee of the Council (or an immediate relative).
- ii. Where there is a contravention of planning control involving the Council's own development that is unresolved through the planning system.
- iii. Issues of significant public interest.
- iv. An enforcement report will be taken to Planning Committee at regular intervals

## **Protocols for Members and Officers Dealing with Planning Matters**

### **General Conduct**

The protocols for conduct recognises the different and complementary roles of Members and Officers in offering a public planning service:

- Officers are responsible to the Council for providing advice, reports, recommendations and some decisions under the Council's Scheme of Delegation.
- Members are responsible for determining applications, however, may delegate formal decision making to Officers within a Scheme of Delegation.

In the planning context, instructions to Officers can only be given through a Council or Committee decision. Members can write or speak to Officers to set out their views to ensure issues they identify are addressed in reports, provided they are material planning matters.

Members should consider in any circumstances whether the Local Code of Conduct applies.

All Members and Officers involved in the planning process should not favour any individuals, groups, firms or localities.

Although they may be influenced by the opinion of others, Members alone have the responsibility to decide what view to take in the interests of the whole District having heard all the available information and evidence at Committee.

All Members and Officers involved with the Planning Committee must take part in the annual training offered by the Council.

### **Gifts and Hospitality**

The Code of Conduct for Members and Employees states a presumption against any gift or hospitality being accepted. Offers of gifts and hospitality should also be recorded.

If receipt is unavoidable, or even a token, it should always be recorded.

## Declaration and Registration of Interests

It is the responsibility of Members to notify any changes to their registerable interests as they occur. All Members will be reminded about this at 12 monthly intervals. This will be a standard item where members are required to present declarations at the beginning of each meeting.

The protocols outline declarable interests. For non-pecuniary interests, a member may still speak and vote. Exemptions for non-pecuniary interests are provided for interest which arise when:

- Membership of a public body
- Appointment by the Council as a representative on an outside public body
- As a representative on an outside public body where the appointment is not by the Council, a member is allowed to speak and vote, unless it concerns the finances or property of the body
- Being a Member or supporter of a body, however not in a capacity relating to the managing company body.

Members should inform the Committee of any significant contact with interested parties to a development where this does not constitute a declarable interest and is significantly different from the general contact which other Members of the Committee have had.

## Development by Council Employees

Councillors or employees submitting their own applications, (or those of immediate relatives) or are affected by an application, should not take part in its processing.

A councillor or employee should identify such applications at the point of receipt by the Council, including when this is through an agent, and the Monitoring Officer should be informed.

All such proposals should be determined by reference to the Planning Committee and the report contain confirmation from the Monitoring Officer that it has been processed normally. Where the application is from the Monitoring Officer, this confirmation will be provided by the Deputy Monitoring Officer.

When a member or employee application is under consideration they will be dealt with and regarded as no different to any other applicant.

## Development by the Council

Developments by the Council will be treated in the same way as private development.

Chairpersons of sponsoring Committees and lead officers for Council developments should consider withdrawing from the Planning Committee during consideration of such items.

## Lobbying

Where Members of the Committee may be lobbied in their representational role - and whether judgements are formed in the passage of an application through the system - they

should not express opinion on the development which indicates they have made up their mind until all the available arguments and evidence are available at Committee.

Advice to the public should be restricted to procedural matters, including making the relevant Officer aware so that material opinions can be reflected in the report.

Members will be able to speak on behalf of a body of opinion, however the Committee should be made aware as to such opinion as distinct from personal views.

There should be no party-political grouping on how to vote on applications prior to a Planning Committee Meeting, or similar voting because an application is moved by a member of the same party.

Members should not lobby or trade with other Committee Members for a particular outcome.

Whilst a Member can speak on behalf of a body of opinion, they should not personally be involved in organising support for or against that opinion.

Members not serving on the Planning Committee may speak to the Committee in accordance with Standing Orders, however, should not be deferred to by the Committee. The Chair will decide when non-Committee Members may speak.

A Parish or Town Council has the right to be consulted and should not automatically be deferred to in coming to a decision. Rather their views, insofar as they are material planning considerations, should be taken account of with other available information and evidence.

### **Discussions pre-application and during passage through the Planning System**

In any discussions it should be made clear that they will not bind the Council to a particular decision. It is acceptable for an Officer to express an opinion on the application prior to Committee, however this must not be stated in a manner which implies this is a decision of the Council.

Through office practice a file note is made of all contacts and meetings relating to an application. In contentious cases a follow-up letter will confirm the contact and outcome.

Officers' advice will be impartial.

### **Reports to Committee**

Reports to Committee will contain details of:

- The proposal and the site
- Any relevant planning history
- An exposition of the Development Plan and other material considerations
- Objections and views from consultation
- The Planning Officers' observations and advice
- A recommendation to grant, refuse or defer with reasons

Members should determine applications in accordance with advice given, including verbal updates to reports, unless they have good planning reasons to the contrary and in the knowledge of all the available information and evidence.

Where members wish to determine an application contrary to the recommendation they should indicate the material reason(s) for doing so at the meeting and these will be detailed in the minutes to the Meeting.

Minutes will relate to the planning reasons for the decision specifically whether:

- It is in accordance with development plan policies, or
- Other material considerations indicate otherwise (and what they are)
- In the case of an approval, the relevant matters to be addressed by planning conditions

If the Committee is minded to make a decision contrary to the recommendation, the relevant officer (including Legal) will be given the opportunity to outline the implications for the Committee of such a decision.

If the Committee wish to add or amend conditions, an Officer will be invited to draft such a condition. A detailed minute of the reasons for the Committee's action should be made.

### Appeals against decisions contrary to Officer's Recommendations

Where an appeal to the Secretary of State is subsequently lodged against a decision made contrary to the Officer's recommendations, Planning Officers (and other Officers as appropriate) will normally act as professional witnesses to present the Council's case at public inquiries and local hearings. However, where this would prejudice the outcome, the ADP may ask Members to conduct the appeal<sup>2</sup>. In this instance the Planning Committee will need to be prepared to identify a Councillor(s) to support the case at a public inquiry or local hearing. This would normally be the Councillors who proposed and seconded the reasons for the refusal. The ADP and the planning team will support the Members in the preparation of the case as appropriate.

### Site Visits

Selection of sites for visits prior to decision will follow the criteria in Annex 'A'.

Site visits will follow the procedures in Annex 'B'.

Any point of explanation or clarification will be by reference to the accompanying officers only.

Members will not make private site visits, they must avoid contact with the applicants/objectors and maintain probity during the process of determination.

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<sup>2</sup> *In public inquiries Officers can only give evidence based upon their professional beliefs. The Royal Town Planning Institute (RTPI) Code of Conduct does not allow its members to make or subscribe to any statements or reports that are contrary to their own bona fide professional opinions.*

Members will decline private site visits at the request of a planning committee unless at a committee site visit where an officer of the Council is present.

### **Review**

Annually, the Committee will visit a sample of implemented permissions to assess the quality of those decisions. These will take place at 6 monthly intervals.

The outcome of appeals will be reviewed by Planning Committee at 6 monthly intervals to outline feedback and lessons learned.

### **Planning Agreements**

Where a planning agreement (Section 106 Agreement) is to be part of a planning application, the details will be included in the report to Committee.

A report will be presented to the Committee at 6 monthly intervals outlining Section 106 matters.

## Annex 'A' - Site Visit Criteria

1. The application under consideration raises specific issues in relation to matters such as scale, design, location, access or setting which can only be fully understood from the site itself.
2. The application or previous development raises an important point of planning principle which has wider implications beyond the site itself and as a result would lead to the establishment of an approach which would be applied to other applications.
3. The application involves judgements about the applicability of approved or developing policies of the Council, particularly where those policies could be balanced against other material planning considerations which may have a greater weight.
4. The application has attracted significant public interest and a visit would provide an opportunity for the Committee to demonstrate that the application has received a full and comprehensive evaluation prior to its determination.
5. There should be a majority of Members insufficiently familiar with the site to enable a decision to be made at the meeting.
6. Site visits will be selected following advice from the relevant case officer in consultation with the Chair or Vice Chair of Planning Committee. Additional visits may be included prior to the consideration of a Committee report when a Member or Officer considers that criteria Nos: 1-4 above apply and an early visit would be in the interests of the efficiency of the development management service. Ward members will be able to request a site visit. Such additional site visits will be agreed for inclusion in consultation with the Chair or Vice-Chair of the Planning Committee.

## Annex 'B' - Procedure for Site Visits

The purpose of a site visit is set out in the criteria in Annex 'A'.

It is not an opportunity for the applicant or others to address the Committee or make representations which would not have been permitted at a meeting of Planning Committee, nor is it appropriate for Members to discuss the merits of the application.

The only persons who should be present at a site visit are:

- Members of the Planning Committee
- Relevant Officers

Procedure at site visits:

1. On arrival, the Chair will call the Members of the Planning Committee present to order.
2. The Chair will ask the Planning Officer to outline the proposal to Members, drawing their attention to the relevant points regarding objections/observations received.
3. The Chair will then ask any other officer present to address the Members.
4. Where an applicant or applicant agent is required to be present to provide access to the site, once access has been secured, he or she shall be asked to leave and shall not be present for the duration of the site visit by members.
5. Members will then be invited to ask any questions or seek clarification of facts from the Officers present. Any matters not to hand will be reported at the Committee meeting. Discussion on the merits of the application will not be permitted.
6. The applicant and others present will not be allowed to speak, unless he or she is specifically asked by an Officer or the Chair to point out particular factual matters on site or is invited to draw the Members' attention to particular factual matters relevant to the site of the planning application.
7. The Chair will close the site visit and Members will promptly leave the site.
8. Whilst conducting site visits Members will have due regard to the health and safety of themselves and others and will follow appropriate safety instructions on site, including any guidance on parking and access. Appropriate safety wear will be worn.



## Annex 'C' – Scheme of Delegation

### **Assistant Director of Planning**

#### **Proper officer functions**

The Assistant Director of Planning is the proper officer for the following functions:

- Ordnance survey matters

#### **Development management**

The Assistant Director of Planning may exercise and authorise in writing other officers appropriately qualified and trained to exercise the following powers under the Town and Country Planning Acts and other relevant legislation:

- All decisions, responses or determinations arising in relation to applications for planning permission, Listed Building Consent, Advertisement Consent, Conservation Area Consent, Certificates of Lawfulness, Variation of Conditions applications (Section 73 Applications)
- Approval of reserved matters
- Prior approvals, consents and consultations submitted to or received by the Council in accordance with all Town and Country Planning, Listed Building and associated legislation
- To respond to consultations for the installation of overhead electricity cables under the Electricity Acts
- To determine applications for the approval of details pursuant to conditions on planning permissions, prior approval, listed building consent, conservation area consent, hazardous substances consent or advertisement consent.
- To make Tree Preservation Orders and to determine applications made under the Order.
- To authorise the service of Building Preservation Notices
- To settle claims of awards of costs awarded against the Council following successful appeals, by an applicant, against a Council planning decision.

Except in the following circumstances:

- Proposals which represent a material Departure or significantly contrary to the objectives of an approved or statutory Development Plan, and which are recommended for approval.
- Proposals which in the opinion of the duly authorised officer, are contrary to the adopted Statutory Development Plan, standards or guidance when taken as a whole, and which are recommended for approval.
- Proposals which are controversial or likely to be of significant public interest or have impact on the Corporate Priorities (i.e. the environment) in the opinion of the ADP.
- Proposals submitted by or on behalf of the Council for its own developments, or on Council owned land, for Major Development or in relation to all other applications where objections have been received.
- Proposals submitted by (including where acting as an agent) or on behalf of a Member of the Council (or his/her spouse or partner or immediate family) or where a District Councillor lives in the adjoining property, a property opposite the application site or a property either side.
- Proposals submitted by or on behalf of a member of staff (or his/her spouse or partner or immediate family) or where a member of staff lives in the adjoining property, a property opposite the application site or a property either side.

All requests by Councillors for the consideration of items by the Development Management Committee must:

- Be submitted on the appropriate pro-forma within 21 days of the circulation of details of the application on the weekly list
- The request must be made by the ward member or adjoining ward in which the application is lodged.
- Include a statement outlining material planning reasons why the proposal needs to be considered by Committee
- Include a list of related Development Plan and national planning policies

All requests will be acknowledged in writing and the reasons for referral included in the officer report to the Development Management Committee. When, in the opinion of the Assistant Director of Planning, the reasons for the request do not constitute material planning considerations, the Assistant Director of Planning in consultation with the Chairman and the Vice Chairman will be able to decline the request.

- Any application, consultation or like matter where the authorised officer considers a decision should be made by the Development Management Committee
- Any application submitted by or on behalf of a Councillor of the authority (or their spouse or partner) or by or on behalf of a member of the Council's Senior Management Team, or an employee within the Development Management or Planning Policy functions of the Council
- Any application submitted by or on behalf of the Council for its own developments, except for the approval of routine minor developments to which no objection has been received

Where there are statutory time limits for making decisions or taking action where non-determination within a set period automatically gives consent (e.g. agricultural buildings, demolitions and telecommunications determinations and notifications of works to trees in a conservation area), the Assistant Director of Planning or other appropriately qualified and trained officers authorised by them in writing, may determine the applications. The authorised officer will consider any objections received and, at their discretion, efforts will be made to resolve the objection before the expiry period. The existence of an objection will not alter the officer's authority to make a decision in these instances.

The Assistant Director of Planning and other appropriately trained and qualified officers authorised by them in writing, may also exercise the following functions:

- Accepting Material minor amendments (Section 73 applications) and/or non-material minor amendments (Section 96a Applications) to approved plans.
- To adopt screening and scoping opinions under the Environmental Impact Assessment Regulations.
- To carry out and adopting Appropriate Assessment under the Habitats Regulations
- To make non-material additions, deletions, or amendments to the conditions to be attached to the grant of planning permission, listed building consent, conservation area consent, hazardous substances consent or advertisement consent, authorised by the Planning Committee or Council.
- To respond to notifications for proposed works to trees in Conservation Areas.
- Issuing hedgerow retention notices and general discharge of duties under the Hedgerow Regulations 1997.
- To determine applications relating to the High Hedge Legislation.

- Authorising powers of entry in respect of complaints and appeals under antisocial behaviour legislation.
- Entering into a Section 106 Agreement on a delegated planning application approval where no financial contributions are required.
- Entering into planning performance agreements on behalf of the Council as the Local Planning Authority.
- Entering premises for statutory purposes.
- To determine the reasons for which planning permission, listed building consent, conservation area consent, hazardous substances consent, or advertisement consent, would have been refused where this is relevant to appeals against the non-determination of applications.
- On a without prejudice basis in relation to appeals in the event that the Secretary of State or the appointed Inspector is minded to grant permission;
  - To suggest appropriate conditions to be imposed on planning permission, listed building consent, conservation area consent, hazardous substances consent or advertisement consent; and
  - To approve/make comments on the terms of Section 106 Agreements or Unilateral Undertakings

#### **Development management: enforcement**

The Assistant Director of Planning is authorised to carry out, and authorise in writing other officers with necessary training and qualifications, the following functions:

- Administer cautions in respect of breaches of advertisement control and in order cases where, following authorisation, court proceedings are considered appropriate
- To make determinations that it is not expedient to take enforcement action.
- To remove or obliterate unauthorised placards or posters or display structures under the Town and Country Planning Act
- To serve Requisitions for Information requiring information as to interests in land or, if related to a planning contravention notice, activities carried out on the land
- To serve Planning Contravention Notices on owners and occupiers of land where it appears that a breach of planning control has taken place
- To serve the following notices following consultation with the Assistant Director for Legal and Democratic:
  - Enforcement notice
  - Breach of condition notice
  - Section 215 notice under the Town and Country Planning Act
  - Listed building enforcement notice
  - Hazardous substance Enforcement notice
  - Discontinuance Notices under the Control of Advertisement Regulations
  - Stop notice
  - Temporary stop notice
- To accept or reject as felt fit such offers to remedy a breach of control as are made under the Town and Country Planning Act 1990
- To authorise the institution of legal proceedings in respect of any matter within the terms of reference of the Planning Committee and following consultation with Legal Services.
- To authorise the institution of legal proceedings for failure to respond to, or to give satisfactory information required by Requisitions for Information, or Planning Contravention Notices.

### **Street naming**

The Assistant Director of Planning and other officers appropriately qualified, trained and authorised by them in writing, have authority to determine uncontested street naming applications.

### **Planning Policy**

Following consultation with the relevant Cabinet Member and the local Ward Councillor(s), the Assistant Director of Planning is authorised to make decisions on the following:

- Applications to designate a Neighbourhood Forum
- To accept or decline repeat proposals for a Neighbourhood Development Plan or Neighbourhood Development Order
- The validity and acceptance of proposals for a Neighbourhood Development Plan or Neighbourhood Development Order
- Appointing a person to carry out the examination of a Neighbourhood Development Plan or Neighbourhood Development Order
- Decisions in respect of action to be taken in response to recommendations included within the Examiner's Report and whether to modify the Plan or Referendum Area prior to submitting it for referendum.

The Assistant Director of Planning has delegated authority to determine applications for grant aid in relation to listed buildings and conservation areas with the following **exceptions**:

- New applications which would commit the district council to expenditure in excess of £1,000
- Applications for supplementary grant which would commit the district council to further expenditure in excess of £500
- Applications where an applicant has requested reconsideration of a decision of the Assistant Director for Legal and Democratic.
- After consultation with the appropriate Portfolio Holder, to respond to policy and other planning documents relevant to the Council, prepared by other bodies.

## Recommendations

*15. Create a clearly defined pre-application process which distinguishes between strategic and minor application and between corporate discussions in relation to growth and investment versus technical input from the planning service.*

*16. The Council should replace the design pad with full briefings for all members of the committee on major applications.*

From the outset we have recognised the value of having a meeting to discuss applications drawing together the expertise from a number of specialists. However, there is an advantage in being clearer on the precise roles which officer and members should undertake.

Officers should lead discussions with applicants, acting under the clear policy position set out in the Local Plan.

The Design Pad process at South Kesteven does not make this clear distinction. The process should be clarified to provide a clear understanding which involves Members at the appropriate stage, while avoiding any potential accusation of pre-determination of applications by members.

There is scope to build upon current practices, particularly forward look given to the portfolio holder and chairman, to ensure the Members can be involved where they want to be, leaving technical feedback to the case officer.

There are four levels of advice / feedback that can occur:

1. High level feedback from significant investors / developers who want reassurance that their proposal will have broad support subject to meeting planning policy requirements. (think big invest brings 500 jobs to the district...). Such engagement might well be appropriate at Leader / and or the Chief Executive plus the Strategic Director (as this post can give the planning perspective). No need for written protocol. however general Codes of behaviour apply regarding advice and the advice to be without prejudice to the due process.
2. Low level general day to day enquiries about planning applications where a judgement can be made regarding compliance with Local Plan policy. This can be done by case officers with advice if needed from Senior staff.
3. The Design Pad: this should deal with both pre-application requests and post submission advice. This is a one stop approach the draws together expertise to best advise application or pre application developers on their proposals. This should be an officials' meeting as the advice given must draw on the policies of the local plan and guidance that Members have already agreed. Relevant officers and officials should hold a pre meet to establish and agree the response to the developer and then the meeting should be held to relay that advice. The case officer should hold overall responsibility for the advice and subsequent recommendation. The meetings should be chaired by a senior officer.
4. Members' Design Pad: Feedback from the officers' discussions with the applicant will be presented to the Chair and Cabinet Member at the regular forward look meetings rebadged as the "Member Design Pad".

5. Finally, there will be cases where it is of benefit to brief members early in the process and either as a result of a decision at the Members Design Pad meeting outlined at 4 above, or if following consultation with the Chair and Portfolio holder. A briefing can be made to the whole committee outlining the facts pertaining to the application. In some cases these can take place before the application has been to either of the Design Pad meetings.

This would be a briefing only and the facts of the proposal would be explained. Members would be able to air any local considerations that officers might need to feedback. These would be open meetings and it would be clear that this is regarding the “issues” which the application might raise and not the merits of the application. Care would need to be taken not to pre-determine the application and training should be given to members on this.