



**SOUTH
KESTEVEN
DISTRICT
COUNCIL**

**Guidance For Members and Officers Dealing
with Planning Matters**

A Local Code of Good Practice

Draft – April 2022

POSITIVE ENGAGEMENT: A GUIDE FOR COUNCILLORS INVOLVED IN MAKING PLANNING DECISIONS - GOOD PRACTICE GUIDANCE NOTE

SUMMARY

Councillors can involve themselves in discussions with developers, their constituents and others about planning matters. Difficulties can be avoided if you follow these useful general hints.

Do

- involve officers and structure discussions with developers
- inform officers about any approaches made to you and seek advice
- familiarise yourself with the Code of Conduct and follow it when you are representing the Council
- keep your register of interests up to date
- be aware of what fairness and impartiality mean in your role
- be prepared to hold discussions with an applicant and officers before a planning application is made, not just after it has been submitted
- preface any discussion with disclaimers; keep a note of important meetings and calls; and make clear at the outset that discussions are not binding
- be aware of what Disclosable Pecuniary Interests, personal and prejudicial interests are – refer to the Monitoring Officer or the Code of Conduct if you are unsure
- recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- use meetings to show leadership and vision
- encourage positive outcomes
- recognise that you can lobby and campaign but that this may remove you from the decision making process
- feed in both your own and your local community's concerns and issues
- be aware that you can engage in discussions, but you must have and be seen to have an open mind at the point of decision making.

Do not

- use your position improperly for personal gain or to advantage your friends or close associates
- meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a 'friendly' private discussion with a developer could cause others to mistrust your impartiality.
- attend meetings or be involved in decision-making where you have a Disclosable Pecuniary Interest or a prejudicial interest – except when speaking where the general public are also allowed to do so
- accept gifts or hospitality
- prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal
- seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- compromise the impartiality of people who work for the Council
- invent local guides or policies

1. Introduction

This Protocol sets out the practices and procedures that Members and Officers at South Kesteven District Council should follow when determining planning applications.

2. Basic Principles

The basis of the planning system is to manage development in the public interest.

Planning is often very contentious because planning decisions affect the private interests of individuals, landowners and developers. Decisions are taken based on informed judgement with a firm policy basis.

The Planning process relies on transparency in decision making and officers and members must act fairly and with integrity.

Development proposals that are policy compliant should be approved without delay.

Members have a duty to represent their constituents but also an overriding duty to the wider community.

3. The role of the Planning Committee

The role of a Planning Committee is to determine major or more complex applications that raise issues of more than immediate local importance. The intention is to allow Councillors to focus on applications needing additional scrutiny where added member value in balancing conflicting pressures is important. This of course does not mean that minor applications cannot be referred to Committee where they raise issues of more than local importance.

Councillors are encouraged to engage with the planning process early, and often many issues can be resolved without applications needing to be referred to Committee for a decision. For example, by raising issues early it may be possible to address concerns through amendments, additional information and/or planning conditions.

Referral to Planning Committee shouldn't be used to arbitrate between competing interest groups or to put off making difficult decisions. Applications should not normally be referred to Planning Committee simply to allow an objector/applicant an opportunity to air their views in a public forum.

Householder or very minor applications should not normally be referred to Planning Committee and it is expected that Councillors will work with officers to resolve any concerns arising from the proposal.

4. Your Role as a Member of the Planning Authority

To make planning decisions openly, impartially and with sound judgement for justifiable reasons.

5. Relationship to the Members' Code of Conduct

Do apply the rules within the Members' Code of Conduct First as these must always be complied with.

The guidance in this note seeks to explain and supplement the Members' Code of Conduct for the purposes of the Planning System. If you do not abide by this Code of

Local Practice you may not necessarily have breached the Members' Code of Conduct but you may put the Council at risk of proceedings regarding legality or maladministration of the related decision.

6. Development Proposals and Interests under the Members' Code of Conduct

Members should declare any Disclosable Pecuniary Interests (DPI) in accordance with the Council's Code of Conduct. These should be declared at the beginning of the Meeting and not at the start of the discussion on any particular matter. However, if you become aware of a DPI after the start of the meeting you should declare it as soon as possible.

Where you have a DPI you should not participate, or give the appearance of trying to participate in the decision making process.

The Monitoring Officer will be able to provide you with any specific guidance or discuss any particular concerns with you ahead of any meeting.

7. Fettering Discretion in the Planning Process

Members making a decision on any planning application as part of the Planning Committee must ensure that they have not already fettered their discretion. This means that you should come to any Planning Committee Meeting with an open mind. Whilst you should familiarise yourself with the application and the reports ahead of the Committee, it is important that you haven't made your mind up on how you will vote at the meeting of the Planning Committee (or Full Council) until you have heard the officer's presentation and all of the evidence and arguments on both sides.

If you have fettered your discretion, it is important that you do not speak and vote on a proposal.

The Monitoring Officer will be able to provide you with any specific guidance or discuss any particular concerns with you ahead of any meeting.

8. Lobbying of Councillors

Lobbying is a normal and perfectly proper part of the political process and those who may be affected by a proposal will often seek to influence the decision by approaching their Local Councillors or Members of the Planning Committee.

Members of the Planning Committee are free to listen to any point of view about a particular planning application, however you should avoid expressing an opinion which may indicate that they or the authority has reached a final conclusion until all of the relevant arguments and evidence has been put before the Planning 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.

Where a member of the Planning Committee goes on record in support of a particular outcome, or campaign actively for it, it will be difficult for that member to argue convincingly that he/she has attended the Committee with an open mind. If there is an appearance of bias or pre-determination then the decision may be vulnerable to a challenge by way of a Judicial Review.

9. Lobbying by Councillors

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, the member attending shall not take part in the voting on any item.

10. Public Speaking at Meetings

Any member of the Public, Parish or Town Council has the right to speak in accordance with the Rules of Procedure for Public Speaking at Planning Committee (Article 9). Their views, insofar as they are material planning considerations, should be taken account of with other available information and evidence.

11. Decision Making

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.

Decisions on planning applications have to be taken in accordance with the Development Plan unless material considerations indicate otherwise. In determining any application the Committee is not bound by the recommendation of their officers. This means that the Committee is entitled to decide the weight to be attached to the various planning considerations that are relevant to the applications. This can sometimes result in a decision which is contrary to the recommendation of Officers (an Overturn).

For example, the Committee could decide any of the following:

- To refuse planning permission where Officers have recommended approval;
- To approve planning permission where Officers have recommended refusal;

- Agree with Officers that planning permission should be refused but for different reasons; or
- Grant permission subject to different conditions or legal requirements to those recommended.

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. Where a motion is put forward that is contrary to the Officer recommendation, the Chairman will ensure that the planning reasons for reaching this motion are clear.

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.

Where a motion is proposed and seconded for a decision that would differ from the Officers recommendation it is important that the Members voting for that motion are clear what it is. For example, in the case of an overturn where the motion is to refuse an application recommended for approval, you must be clear as to the reasons for refusal. This means that you are clear as to the substance of the reason(s) for refusal including the policies that the proposal is contrary to. If you are not clear you should ask for clarification before voting.

Officers may make slight amendments to the wording of any new reasons for refusal or conditions following Committee although they will not alter their meaning.

Do not vote on a proposal unless you have been present to hear the entire debate including the Officer's introduction and presentation on the application.

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

12. Training

As set out in the Constitution, Councillors can only sit on the Planning Committee where they have received the mandatory training.

Officers will ensure that annual training is provided and this will be available to all Councillors; it is your responsibility to ensure that you attend this training.

In addition to the annual mandatory training session Officers will provide other training sessions throughout the year on a variety of topics. Members are encouraged to attend as many of these training sessions as possible.

Members are encouraged to identify any topics that they would like to have training upon.

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.

13. Process

All members will be notified by email of individual applications within their wards. Where an application site straddles a ward boundary, Councillors from all of the wards concerned will be notified. Where a site is located adjacent to the boundary of a Ward, the adjoining Ward Councillors will be notified.

All Councillors will continue to receive the Weekly list setting out applications validated by the Council. Members will also receive updates relating to enforcement cases where it has been established that there is a breach of planning control.

Members are encouraged to view the plans online and contact the case officer if there are any queries or matters they wish to discuss.

Officers are encouraged to contact Councillors where they feel that a matter may be contentious and this should be done as soon as possible in the process.

If a Ward Councillor or adjoining Ward Councillor wishes any application to be considered by the Planning Committee they should advise the Case Officer in writing and clearly state the planning issues that give them concern. The Councillor making this request must also demonstrate that the proposal would have such a prejudicial impact or effect on the area of District or its residents to warrant determination by Planning Committee. This should be done as soon as possible and within 21 days of first being notified of the receipt of the application.

Where any Councillor considers that an application not in their ward or adjoining their ward should be referred to the Planning Committee for a decision, that Councillor should first discuss this matter with the Ward Councillor(s). If the Ward Councillor(s) doesn't respond or disagrees with the request, then the matter can be escalated to the Chairman/Vice-Chairman of the Planning Committee however it must be demonstrated that the initial discussion has taken place along with the reasons for the escalation and any response from the Ward Councillor(s).

It is understood that sometimes there may be extenuating circumstances where it was not possible to make a request to call an application to Committee within the initial 21 day notification period. For example this could be due to additional information coming to light after the notification period. If this is the case Councillors should submit their request in writing providing the reasons for the late request along with the planning reasons for the call-in. The request will need to be agreed with the Chairman and Vice-Chairman of the Committee in consultation with the Assistant Director of Planning; if they disagree with the call-in request you will be informed. Councillors are however

encouraged to make any request to call an application to Committee as soon as possible to avoid unnecessary delays in the determination of applications.

Where a request is made for an application to be considered by the Planning Committee is agreed by the Chairman of the Planning Committee then the reason given for the referral will be included in the report.

Where a request for Committee referral is not agreed with, the Ward Councillor(s) making the request will be informed.

It is expected that if the concerns that gave rise to the Committee referral request are addressed through amendments to the application or conditions, the referral request will be withdrawn.

14. Reports to Committee

The advice from the Courts and Ombudsman have determined officer reports on planning applications must have regard to the following points:

- reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted;
- relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations;
- reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur;
- reports should contain technical appraisals which clearly justify a recommendation;
- if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004

15. Decisions contrary to Officer Recommendations and subsequent Appeals

In determining planning applications, the Planning Committee is entitled to decide the weight to be attached to the various planning matters (benefits and harms) that are relevant to the application. This may lead to a decision that is different to the recommendation of the Officers

In these circumstances, it is essential that reasons for the difference of opinion are clear in the minds of the Committee members.

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 Assistant Director of Planning may ask Members to conduct the appeal¹. In this

¹ 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.

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 Assistant Director of Planning and the planning team will support the Members in the preparation of the case as appropriate.

16. Site Visits

Members can make site visits. However, they must avoid contact with the applicants/objectors and maintain probity during the process of determination. Members will decline invitations from developers to attend private site visits where additional information may be presented prior to committee.

Health and Safety & Lone Working considerations are the responsibility of the Member. Members do not have rights of access upon private land and such visits must be undertaken from the public highway or via public rights of way.

Ward members **and/or Members of the Planning Committee** will be able to request a site visit for any application that is being referred to Planning Committee for a decision. **If any other Councillor considers that a site visit should be carried out, they should discuss this with the Ward Councillor and the Chairman/Vice-Chairman of the Planning Committee.** Councillors should give reasons for the site visit so that Officers and Councillors are clear what elements of a proposal or site need to be viewed. Where a request is made, site visits will be agreed for inclusion by the Assistant Director of Planning in consultation with the Chair or Vice-Chair of the Planning Committee; site visits will take place where it is clear that the visit will add value to the consideration of the application.

Site visits will be led by a Council Officer who will explain the proposals in the context of the site. They will also explain the reasons why the site visit has been called.

Any third party at the site visit including the applicant will not be permitted to address Councillors. On occasion, it might be necessary to ask a point of clarification or fact of a third party however this will be at the Lead Officer or Chairman's discretion.

Details of the site visit including who attended will be recorded by the lead officer in attendance.

The purpose of the site visit is to establish facts about the site and its surroundings. No decisions will be made at the site visit.

Ideally site visits should be requested pre-committee to avoid delays in the decision-making process. However, the Committee may resolve that a decision is deferred pending a Member Site visit. This must be moved and voted upon in the usual way during Planning Committee at any time after the Officers presentation. The reasons for the site visit must be established and clearly recorded in the minutes.