

Protocol for  
Good Practice  
in  
Planning Procedures  
2003

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# Purpose and Status

This Protocol has been prepared as a public guide to the conduct of all the District's Councillors and staff who come into contact with the planning process. It does not just apply to members of the Planning Committee and professional Planning Officers. Its aim is to ensure, and to demonstrate, that the Council takes its planning decisions openly, impartially and for sound, justifiable planning reasons. The Protocol, which was first adopted as a "Local Code" by the Council in 1999, has been fully reviewed to take account of the implementation of the Human Rights Act 1998, changes to the Council's constitution brought about by the Local Government Act 2000, and the introduction of public speaking at Planning Committee meetings.

Councillors must observe the Members' Code of Conduct adopted by the Council on 30 April 2002 and the Council's staff is subject to an Officers' Code of Conduct. In addition, professional planning officers are bound by their Institute's own Code of Conduct.

This Protocol provides supplementary and localised guidance on how the planning system in Dover District should be run. It has been approved by the Council's Standards Committee and where appropriate, it is reflected in the Rules of Procedure and Staff Handbook, and supported by operational procedures approved by the Council. It will be made available to the public free of charge and will continue to be kept under regular review.

The Protocol provides a measure against which the Council's operation of the planning system is to be judged. Adherence to the Protocol should reduce cause for complaint by the public. However, when complaints are made they will be assessed for a breach of the Codes of Conduct and a breach of the Protocol. Complaints that involve an alleged breach of the Members' Code of Conduct will be referred to the Standards Board for England. The Council's Standards Committee will deal with complaints that involve only an alleged breach of the Protocol. Failure to abide by the Protocol is likely to result in a complaint being upheld. Similarly, breaches of the Protocol may provide grounds for a finding of maladministration by the Ombudsmen.

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## **The Human Rights Act**

The Human Rights Act 1998, and in particular Article 6, is concerned with guaranteeing procedural fairness in the determination of civil rights and obligations, especially the entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal. These principles are at the heart of the planning system. Full regard has been paid to the Human Rights Act 1998 in drawing up the Protocol and adherence to the Protocol should help to ensure that these principles are translated into the day-to-day operation of the system and that there are no breaches of the Act.

Should any Councillors, members of staff, or of the public, have any queries about the operation of the Protocol they should contact the Chief Planning and Building Control Officer or the Monitoring Officer.

## **General Principles**

- All planning decisions, whether related to preparation of the Development Plan or to the control of development, will be taken in the interests of the whole District.
- Planning decisions will not reflect political considerations and, when made at the Planning Committee, will only be taken after the receipt of a written report and in the light of any debate at the Committee.
- The Protocol will be kept up-to-date through regular review and the Planning Committee will be informed of any important case law, and decisions by the Standards Board and Ombudsmen and any advice or guidance by the Standards Board.
- No councillor shall serve on the Planning Committee, whether as a permanent member or as a substitute, without having received training provided by, or on behalf of, the Chief Planning and Building Control Officer.

## **General Conduct of Councillors and Officers**

- Impartiality is crucial for public confidence in the successful operation of the planning system. Gifts and hospitality should be avoided, or at most accepted to a minimum level. Any offer of a gift or hospitality of whatever value must be declared in writing to the Council's Monitoring Officer. When a gift or hospitality over the value of £25 is accepted, it must be declared in writing to the Council's monitoring officer in accordance with the Members' Code of Conduct.
- Social contacts involving Councillors and officers with developers, agents and other frequent users of the planning system are inevitable but as a general rule, should not be encouraged. Such contact should be avoided when a relevant issue is before the Council. However, if contact is made it should be recorded and an interest may need to be declared.

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## **Declaration and Registration of Interests**

- Councillors must follow the Members' Code of Conduct regarding personal and prejudicial interests.
- Councillors who sit on, or address, the Planning Committee, or any other meeting of the Council that considers a planning matter, must disclose the existence and nature of any personal interest at the beginning of the consideration of the item of business or as soon as the interest becomes apparent.
- In addition to declaring an interest at the meeting, notification of intention to declare should, if possible, be given to the Chairman and Clerk prior to the meeting.
- The Members' Code of Conduct states that a Councillor may regard himself as not having a prejudicial interest in a matter if that matter relates to certain outside or public bodies of which he is a member. In general terms, simple membership of a body, such as a Town/Parish Council or Health Authority, does not therefore prevent a Councillor from participation in a decision on a matter which relates to that body. In planning matters, however, it is vital that a Councillor is able to demonstrate impartiality and that, in taking part in a decision, the case has not been prejudged. Therefore, if a Councillor who is a member of the Planning Committee has previously formed a view on a matter for decision in the context of membership of an outside body, including a Town or Parish Council, this must be disclosed. The Councillor could then address the Committee but not vote. If, on the other hand, the Councillor had scrupulously avoided forming a view in advance on the matter, this should be disclosed together with the steps taken to remain impartial. The Councillor may then address the Committee and vote.
- The Council's Executive member with responsibility for the Development Plan may be a permanent member of the Planning Committee but not chair the Committee. Any Executive member may act as a substitute for a member of the Planning Committee. If such an Executive member, acting in an Executive capacity, decides to promote or take an early view on a planning matter that subsequently comes before the Planning Committee for decision, they should disclose the fact and may speak on the matter but not vote.
- The principle that following the declaration of a prejudicial interest a Councillor should withdraw from the meeting, should also be applied to group meetings about planning issues.
- Councillors must notify the Council's Monitoring Officer of any change to their registerable interests within 28 days in accordance with the Code of Conduct.
- When Councillors have business or other interests which are likely to bring them into frequent contact with the planning system, they should not serve on the Planning Committee.

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## **Continued**

- Should the number of declarations made by a member of the Planning Committee become so great as to cause concern, the Monitoring Officer will draw the matter to the attention of the Committee's Chairman and Vice-Chairman.
- Guidance to all staff on declarations of interest is set out in the Staff Handbook - Appendix 2, Code of Conduct.

## **Development Proposals Involving Councillors, Council Staff and the Council**

- When a Councillor or a member of staff acts on their own planning matter, or on behalf of someone else, or when a planning matter is known to involve a family member, close friend or business associate of that Councillor or member of staff, they shall;
  - (a) give prior written notification to the Chief Planning and Building Control Officer;
  - (b) if appropriate, seek written confirmation from the Chief Planning and Building Control Officer as to whether planning permission is needed; and
  - (c) have the opportunity to make formal representations but take no other part in the processing, decision or monitoring of the matter.
- Councillors acting in a professional capacity for a client must, in addition, adhere to the Council's "Protocol for Officers and Members for Dealing with Conflicts of Interest of Councillors in Professional Practice".
- Applications for planning or related approvals submitted by, or on behalf of, a Councillor or member of staff will only be determined by a meeting of the Planning Committee after the submission of a full written report and all such items will be clearly identified. The Chief Planning and Building Control Officer will also consider whether applications submitted by relatives (as defined in the Code of Conduct), friends or business associates, or planning matters where a Member or Officer is a third party, should be reported to the Planning Committee.
- Applications for planning or related approvals submitted by the Council, or in which the Council has a significant interest, will only be determined by a meeting of the Planning Committee after the submission of a full written report, and all such items will be clearly identified.

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## **Lobbying of and by Councillors**

- When contacted by applicants or others, Councillors who sit on the Planning Committee should confine advice to matters of procedure and encourage the person to contact a Planning Officer. They should explain to those lobbying that, having understood the issues raised, they will not offer an opinion until all matters have been considered at the Planning Committee meeting. Councillors who go beyond this and openly support a particular outcome prior to the debate at Committee, should declare their position at the Committee meeting and may speak but then withdraw from the meeting and not take part in the vote.
  
- When a Planning Committee member, who is also a single Ward Councillor or Parish Councillor, is canvassed/lobbied by constituents and wishes to remain impartial, he or she could ask a neighbouring Ward Councillor to speak on their behalf. If this is not possible and the Councillor feels that he, or she, must speak on behalf of constituents prior to the Committee meeting they will not be able to take part in the vote, in accordance with the above point.
  
- If, in the above case, a neighbouring ward councillor is prepared, to address the Planning Committee in accordance with the Public Speaking Protocol, they shall not speak for more than three minutes.
  
- When a Councillor asks for a planning matter to be referred to the Planning Committee for decision, reasons should be given in writing to the Chief Planning and Building Control Officer and recorded in the report.
  
- Prior to the completion of any Committee report, all Councillors should only discuss matters with officers to obtain factual or procedural information.
  
- Political group meetings shall not be used to decide how Councillors will vote.

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## **Pre-application Discussions**

The Council will be happy to take part in pre-application discussions with landowners, developers and/or their agents on the following basis;

- (a) the discussion should only seek to establish a proposal's relationship with the development plan and other material considerations which may lead to an indication that it is likely, or unlikely, to be successful, or only likely to be successful if additional information is supplied or revisions undertaken;
- (b) additional issues and material considerations may arise as a result of consultation on a formal submission and may result in an outcome different to that previously indicated;
- (c) a Planning Officer must always be present to give planning advice;
- (d) potentially contentious meetings should be attended by two officers and, if there is a danger of misunderstanding, a follow up letter should be sent;
- (e) any opinion expressed by planning officers will be subject to the caveat that it is an informal view and does not bind the Planning Authority to a particular decision. Other officers should make it clear that their comments relate only to their own professional area and should not be construed as a "planning view". Officers who are members of their professional bodies should only give advice in accordance with their membership of those bodies;
- (f) Councillors must be very careful about meeting developers as this may inhibit their ability to take part in the decision. Such meetings should only be to gather facts and a Planning Officer should be present;
- (g) requests to make direct presentations to the Planning Committee shall be determined having regard to the likely usefulness to the Committee in reaching a decision.

## **Reports to Committee**

- Reports should include a clear and reasoned recommendation based on the development plan and any material considerations.
- When a report has been drafted pending the resolution of outstanding issues these should be fully explained and listed and first consideration should normally be given to the use of alternative recommendations of approval or refusal, rather than of deferral.
- Oral reporting by officers should normally be confined to updating and reporting on outstanding matters identified in the written report, and be carefully minuted. Late representations and submissions of information will be dealt with in accordance with procedures laid down by the Planning Committee and detailed in Appendix A.

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## **Public Speaking at Planning Committee**

The Council has agreed that members of the public can address the Planning Committee in relation to individual planning applications. The procedure for this is set out in Appendix B. Apart from furthering the democratic nature of the planning process, this system may enable Committee members who are lobbied to remain impartial, if they so wish. It also allows the opportunity for District Councillors who are not members of the Planning Committee to address the Committee.

## **Decisions Contrary to Recommendation or the Development Plan**

- When the Committee wishes to grant permission contrary to officer recommendation or the Development Plan, the reasons for doing so must be clearly recorded in the minutes.
- When the Committee wishes to refuse permission contrary to officer recommendation or the development plan, the Committee will identify the grounds for refusal prior to taking a vote.
- A Legal Officer should always attend the Committee meeting to ensure that procedures have been properly followed.

## **Committee Site Visits**

- The Planning Committee shall only defer the determination of applications for a site visit in accordance with guidelines approved by the Committee - see Appendix C.
- The site visit should be run in accordance with procedures laid down by the Committee - see Appendix D.

## **Review**

- Members of the Planning Committee will receive training. This will include an annual tour of the District, to review past decisions, with a subsequent report of findings back to the Planning and Standards Committees.
- The Chief Planning and Building Control Officer should ensure that there is no significant difference of interpretation of planning policies between Planning Officers.

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# APPENDIX A

## Representations and Submissions of Information to the Planning Committee

1. This Appendix only relates to applications for planning and related approvals.
2. Letters from third parties, which are received otherwise than as a response to formal public consultation, will be taken into account but will not be considered as public representations for the purposes of the Committee report or determining whether the decision may be made under the scheme of delegation.
3. Only those points which are material planning considerations will be reported to Committee and taken into account in decision making.
4. Only representations which are material planning considerations will be taken into account in the operation of the scheme of delegation of powers to the Chief Planning and Building Control Officer.
5. Applications to regularise development received as a result of a complaint, will be determined in accordance with the scheme of delegation.
6. Plans and correspondence received within 48 hours of the scheduled start of a meeting of the Planning Committee will not be considered at that meeting unless, in the opinion of the Chief Planning and Building Control Officer, it would be expedient to do so, for example, because the representation raises a new material consideration.
7. Representations received subsequent to a Committee resolution on an application but prior to the despatch of the decision will be dealt with in the following way;
  - (a) no action will be taken if the Chief Planning and Building Control Officer is satisfied that they do not raise any material issues additional to those already considered; and
  - (b) if the Chief Planning and Building Control Officer is satisfied that they do raise new material issues, the application will be reported back to the next available meeting of the Committee.

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# APPENDIX B

## Protocol for Public Speaking at Planning Committee

- 1) The scheme for public speaking at Planning Committee only concerns matters relating to individual planning applications contained in the Planning Committee agenda and not to other matters including Tree Preservation Orders or Enforcement matters.
- 2) Any person wishing to speak at the Planning Committee should submit a written request using a form provided by the Council and indicating whether the speaker is in favour of, or opposed to, the planning application.
- 3) The period of notice shall be not later than two working days prior to the meeting of the Planning Committee
- 4) Speaking opportunities shall be allocated on a first come, first served basis but with the applicant being given first chance of supporting the scheme. Applicants and third parties will be notified of any other requests to speak. The identified speaker may defer to another at the discretion of the Chairman of the Committee.
- 5) One person shall be allowed to speak in favour of, and one person allowed to speak against, each application. The maximum time limit will be three minutes per speaker and each person to speak once only when the application is first considered, even if an application is considered on more than one occasion. This does not affect a person's right to speak at a site visit if the Committee decides one should be held.
- 6) The procedure to be followed when members of the public address the Committee shall be as follows:
  - a) Chairman introduces item
  - b) Planning Officer updates as appropriate
  - c) Chairman invites members of the public and Ward Councillor(s) to speak, with the applicant or supporter last
  - d) Planning officer clarifies as appropriate
  - e) Committee debates the application
  - f) The vote is taken
- 7) In addition to the arrangements outlined in 5 above, District Councillors, who are not Members of the Committee may be permitted to address the

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Planning Committee for three minutes in relation to planning applications in their Ward. This is subject to giving formal written notice of not less than two working days and of advising whether they are for, or against, the proposals. In the interests of balance, a further three minutes' representation on the contrary point of view will be allowed from the identified speaker, or an additional speaker. If other District Councillors wish to speak, having given similar notice and with the agreement of the Chairman, this opportunity will be further extended as appropriate.

- 8) Agenda items will be taken in the order listed.
- 9) The Chairman may, in exceptional circumstances, alter or amend this procedure as deemed necessary.

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# APPENDIX C

## Guidelines for Committee Deferral for a Site Visit

1. All requests for site visits will be considered on their merits having regard to the likely usefulness to the Committee in reaching a decision.
2. The following criteria will be used to determine usefulness;
  - (a) the matter can only be safely determined after information has been acquired directly from inspecting the site;
  - (b) there is a need to further involve the public in the decision making process as a result of substantial local interest, based on material planning considerations, in the proposals; and
  - (c) the comments of the applicant or an objector cannot be adequately expressed in writing because of age, infirmity or illiteracy.
3. The reasons for holding a Committee site visit must be recorded in the minutes.
4. The Committee will appoint a Site Visit Panel and a Chairman, also to be recorded in the minutes.
5. The purpose of the Panel is to gather information and opinion, and report its findings to the Committee.

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# APPENDIX D

## Site Visit Procedure

1. The Committee will invite the Applicant and/or his representatives, those who made representations for or against the proposal, Ward Councillors, and Town/Parish Council representatives to attend.
2. Parish/Town Councils will be sent a copy of a notice with a request that it be displayed on their noticeboards to give other interested parties the opportunity to attend.
3. The Chairman (appointed by the Committee) will introduce Members and Officers of the Council, outline the procedures, and invite the Applicants, Parish Councils and interested parties to introduce themselves.
4. The Planning Officer will explain the planning policies and material considerations relating to the application and the reason for the site visit followed, if appropriate, by comments from any other relevant Council Officer.
5. The Parish/Town Council representatives will then be invited to state their Council's views.
6. Those making representations will be invited to state their grounds of objection/support. Each person will be given the opportunity to speak once—and asked to keep to the matter under consideration and to not repeat views expressed by other speakers.
7. The Ward Councillor will be invited to raise any points.
8. Members of the Panel will be invited to seek any further information or clarification but should not express a view on the merits of the case.
9. The Applicant or Agent will be invited to put forward points and answer any questions raised. The Chairman may permit any person or officer to speak again in order to clarify points raised.
10. Members of the Panel will be given a final opportunity to seek information.

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11. If all relevant aspects of the plans, the site and its surroundings have not already been seen, the Panel will inspect them.
  12. Members of the Panel will then retire to consider their views on the application in the light of the additional information obtained and to agree their report to the next meeting of the Planning Committee.
  13. The Chairman may, in exceptional circumstances, alter or amend this procedure as deemed appropriate.
  14. At the next meeting of the Planning Committee the Planning Officer will make an oral report on the site visit having regard to any additional information received and including both the majority and any minority views of the Panel; the matter will then be open to Committee to debate.