

## **SECTION 19**

### **19. PROTOCOL FOR COUNCILLORS.**

The following protocol seeks to clarify the roles of the members of the Planning Committee (“the Decision Maker”), Local Members and Councillors generally.

#### **19.1 INTRODUCTION**

- 19.1.1 The Council has one Planning Committee comprising 15 members which determines those Planning Applications referred to it for decision in accordance with the Gwynedd Planning Delegation Scheme.
- 19.1.2 A planning application will, however, in accordance with the Gwynedd Planning Delegation Scheme more often than not be determined by the Head of Regulatory rather than the Planning Committee. In this situation those Members who sit on the Planning Committee will have no role to play in the decision making process.
- 19.1.3 In respect of a Planning Application in his/her electoral division or which affects his/her electoral division a Councillor may exercise the power of call-in (so that the application is dealt with by the Planning Committee and not the Head of Regulatory).
- 19.1.4 A Councillor may also in respect of a Planning Application in his/her electoral division or which affects his/her electoral division attend a meeting of the Planning Committee when that application is determined to put forward the views of those constituents he/she represents.
- 19.1.5 The roles and powers of Councillors may be restricted where there are conflicts between their position as Councillors and their private or outside interests.
- 19.1.6 These roles and powers of members are defined in more detail below.

#### **19.2 “DECISION MAKER” ROLE**

- 19.2.1 A Councillor who is a member of the Planning Committee and who takes part (or who intends to take part) at a meeting of the Planning Committee in the determination of particular Planning Application will for the purposes of this Protocol be a “Decision Maker” in relation to such Planning Application.
- 19.2.2 A Councillor who is a Decision Maker shall comply with the provisions of the Members’ Code of Conduct generally.

#### **19.3. “LOCAL MEMBER” ROLE.**

- 19.3.1 When a Planning Application is in a Councillor’s electoral division, the Councillor may attend a meeting of the Planning Committee to make representations about the planning application on behalf of his/her constituents, and for the purposes of this Protocol he/she will be a “Local Member” in relation to that Planning Application.

- 19.3.2 When a Councillor is a member of the Planning Committee, the Councillor cannot be a Decision Maker in relation to planning applications in his/her electoral ward. In relation to any planning application in his/her electoral ward every councillor shall be a Local Member in the context of this protocol.
- 19.3.3 When a Local Member, for whatever reason, cannot be present at the Planning Committee where an application in his/her electoral ward is to be discussed, he/she may arrange for another Councillor to attend the Planning Committee and make representations about the Planning Application on behalf of his/her constituents. In such circumstances this Councillor shall be the Local Member in the context of this Protocol.
- 19.3.4 A Councillor who is a Local Member shall comply with the Public Speaking Provisions and the Members' Code of Conduct generally. Further provisions relating to the "Local Members" role are also contained in the next following section.
- 19.3.5 When a councillor who is a Local Member has a prejudicial personal interest in accordance with the Members' Code of Conduct, he/she will not be entitled to address the Committee. In such circumstances he/she can arrange for another councillor to attend the Committee in order to submit observations regarding the planning application on behalf of the electorate.

#### **19.4 NON-PLANNING COMMITTEE MEMBER ROLE.**

- 19.4.1. Subject to the provisions of the Members' Code of Conduct generally a Councillor who is not a Member of the Planning Committee (whether or not he/she plays or intends to play the role of "Local Member") will be free to :
- discuss any planning application with the applicant/agent/objector/lobby group, etc.
  - attend any locally organised meeting concerning the application;
  - attend any Town or Community Council Meeting concerning the application and speak about the application (including expressing a view either for or against the application) and (if a member of the Town or Community Council) vote upon the application;
  - relay relevant information about the application to a planning officer;
  - seek information/clarification about the application from a planning officer;
  - should follow the rules on lobbying in accordance with Section 13 of this Protocol.

#### **19.5 "CALL-IN"**

- 19.5.1 A Councillor (whether a Member of the Planning Committee or not), in respect of a planning application in his/her electoral division, or which affects his/her electoral division, or any other two Councillors (whether a Member of the Planning Committee or not), may submit a written request to the Gwynedd Planning Manager within the established timescale so that the Planning Application be referred for determination to the Planning Committee. The written request should contain clear planning reasons for requesting an application to go to the Planning Committee.

- 19.5.2 Where a Councillor exercises the right to “call in” a planning application to the Planning Committee in accordance with 5.1 above, the prescribed period for notification shall be 16 calendar days from the date of the letter of notification.
- 19.5.3 Where two Councillors (not being a Local Member) exercise the right to “call in” a planning application to the Planning Committee in accordance with 5.1 above, a letter of notification should be sent to the Local Member.
- 19.5.4 Where two Councillors (not being a Local Member) exercise the right to “call in” a planning application to the Planning Committee in accordance with 5.1 one of the said Councillors may make representations to the Planning Committee in relation to that specific application. Such Councillor shall comply with the Public Speaking Provisions and the Members’ Code of Conduct.
- 19.5.5 For the avoidance of doubt where a Councillor exercises his right to speak in accordance with 5.4 above, this is in addition to the rights of the Local Member in accordance with 4.1 above.

## **19.6. PREDETERMINATION.**

- 19.6.1. Whilst taking part in meetings of the authority, or whilst making decisions about an item before the Planning Committee, a Decision Maker should do so with an open mind and objectively. During the decision making process a Decision Maker must act fairly taking proper account of the public interest. In planning decisions, the decision must always be made on the basis of the facts submitted, and a Decision Maker’s mind must not be made up in advance to the extent that he/she is entirely unprepared to consider all the evidence and advice given.
- 19.6.2 Having a completely closed mind is known as pre-determination. A Decision Maker is entitled to hold a preliminary view about a particular matter in advance of a meeting (pre-disposition) as long as he/she keeps an open mind and is prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching a decision.
- 19.6.3 Pre-determination on the other hand would be where a Decision Maker has clearly decided on a course of action in advance of a meeting and is totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.
- 19.6.4 Therefore, a Decision Maker should consider the above carefully before taking part in the Committee as a Decision Maker. The advice of the Monitoring Office should be sought in advance and if it is considered that a Decision Maker has predetermined in relation to a specific item an open declaration should be made before the item is considered by the Planning Committee, and the person should not speak or vote on the item and should leave the Chamber during the discussion.

## **19.7 A COUNCILLORS' DIRECT CONNECTIONS WITH APPLICANTS AND OTHERS.**

- 19.7.1. If a Councillor advises applicants, agents, objectors or other interested parties about the likely acceptability of planning proposals then in relation to planning applications relating to those proposals that Councillor cannot undertake the role of "Decision Maker"
- 19.7.2 A member who wishes to ensure that he/she remains eligible to carry out the role of "Decision Maker" should advise prospective applicants to contact a Planning Officer for advice on both merits and procedures.

## **19.8. MEMBERS SHOULD SEEK ADVICE.**

- 19.8.1. A Councillor in any doubt as to his position under this Protocol or Members' Code of Conduct should always seek the advice of the Monitoring Officer.

## **19.9 OBLIGATIONS OF "DECISION MAKER"**

- 19.9.1. A Decision Maker in relation to any planning application to be determined by the Planning Committee:
- **shall not** lobby or influence or attempt to lobby or influence another Decision Maker or the Head of Regulatory concerning such a planning application and its determination prior to the Planning Committee considering and determining that planning application;
  - **shall not** accept any gifts or hospitality from anyone connected with such planning application and take immediate steps to register any offers or gifts or hospitality refused in the register kept for that purpose by the Head of Democracy and Legal;
  - **shall not** accept or indicate that he/she will accept any letter, pamphlet or other written material (including e-mail and fax) concerning such a planning application before it is determined by the Planning Committee. Where a Decision Maker gratuitously receives such material he/she forthwith forwards it to the Head of Regulatory (who shall notify the sender, if known, that the material has been forwarded to him/her and will be referred to, as appropriate, in the Officer's Committee Report)
  - **shall not** attend any Meeting, Briefing or Discussion concerning such planning application which is not arranged by or attended by the Head of Regulatory or otherwise authorised in writing by the Monitoring Officer and shall have regard to the provisions relating to attending public meetings in Section 10 below;
  - **shall not** indicate or express publicly or privately the likely decision on or the merits of/objections to, such planning application prior to the Planning Committee considering and determining that planning application. In the event of a Decision Maker doing so he/she must take advice from the Monitoring Officer regarding him/her continuing in the role of the Decision Maker;

- **shall not** give a commitment in relation to that planning application prior to its consideration at the Planning Committee. **It is of vital importance that Councillors come to meetings with an open mind and can demonstrate that they are open-minded;**
- **shall not** bring detailed presentations with him/her to be read out at the meeting. This could be perceived as indicating that the Councillor had already decided in favour of, or against an application prior to attending the meeting. (It is recommended that Councillors make notes of points raised at the meeting as they occur for use in any presentations);
- **shall not** vote or take part in the Planning Committee meeting of he/she has not been present to hear the entire debate, including the officer's presentation concerning the application;
- **shall not** resume his/her seat in the Planning Committee room or chamber (having left the room or chamber before the debate on the application began or during the debate on the application) until consideration of the application being determined at that time is concluded;
- **shall not** propose, second or support a decision contrary to the Development Plan or the recommendations of the Head of Regulatory without clearly identifying and articulating the planning reasons supporting that proposed decision. Those reasons must be given prior to the vote and be recorded in the Minutes;
- **shall not** move a motion that the planning application be deferred without clearly identifying and articulating the reasons justifying such deferral. Those reasons must be recorded in the Minutes if the planning application is deferred;
- **shall not** vote on the application at an earlier meeting of a Town or Community Council. In the event of a Decision Maker doing so he/she must take advice from the Monitoring Officer regarding continuing in the role of Decision Maker.

19.9.2 A Councillor who is a Member of the Planning Committee and who wishes to undertake the "Local Member" role in relation to a planning application which is to be determined by the Planning Committee shall comply with the provisions in this Protocol relating to the "Local Member" particularly those in Sections 4 and 13.

19.9.3 A Councillor who is a Member of the Planning Committee shall comply with the **Members' Code of Conduct** and is reminded in particular that if he/she has in respect of a planning application to be determined by the Planning Committee

- i) a Personal Interest - the requirements as to disclosure;
- ii) a Prejudicial Interest - the need to obtain a dispensation from the Standards Committee - or otherwise be unable to undertake the role of a Decision Maker.

## **19.10. DECISION MAKER WHO HAS EXERCISED POWER OF CALL-IN.**

19.10.1. If a specific planning application falls to be determined by the Planning Committee as a result of a Call-in request from a member of the committee then that member needs to consider carefully the role which he/she is able to play when the Planning Committee comes to consider and determine the application in question. In particular where the Member of the Planning Committee who has made the Call-in request :-

- has couched the Call-in request in language which might indicate that he/she has already formed a clear and settled view as to the appropriate outcome of the application; or
- has made the Call-in request following discussions with the applicant/ agent/objector and/or any third party (including another Councillor whether a Member of the Planning Committee or not). The member should seek advice from the Monitoring Officer regarding him/her continuing in the role of the Decision Maker.

## **19.11. OBLIGATIONS OF “LOCAL MEMBER”**

19.11.1 A Councillor acting as a Local Member (whether a member of the Planning Committee or not):

- **shall not** sit with members of the Planning Committee, when attending a meeting of the Planning Committee concerning the planning application in question and must wait to be called to make any representations in the public area of the room;
- **shall not** speak to any member of the Planning Committee in relation to the planning application in question, either during a meeting of the committee or otherwise;
- **may**, in relation to the planning application in question with the consent of the Chair, respond to questions from members of the committee, the applicant or his agent and any other party allowed to speak at the meeting;
- **shall not** accept any gift of hospitality from anyone connected with the planning application in question and take immediate steps to register any offers of gifts or hospitality refused in the register kept for that purpose by the Head of Democracy and Legal.

19.11.2 Members who are not on the Planning Committee are expected to undertake training provided by the Council at least once annually to enable them to properly carry out their role as local representative.

19.11.3 A Councillor acting as a local member who requires further information on the planning application in question should seek such information from the relevant planning officers and not from members of the Planning Committee.

## **19.12. RIGHTS OF “LOCAL MEMBER”**

19.12.1 For the avoidance of doubt a “Local Member” will have those rights set out in Section 4.1. of this Protocol under the heading of “Non-Planning Committee Member Role”.

### **19.13. LOBBYING.**

- 19.13.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the Planning Committee. As the Nolan Committee's Third Report states.. "It is essential for the proper operation of the Planning system that local concerns are adequately ventilated. The most effective and suitable way this can be done is via the local elected representatives, the Councillors themselves."
- 19.13.1.2 However, such lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a councillor being called into question.
- 19.13.1.3 When being lobbied, a Decision Maker should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on an issue before they have been exposed to all of the evidence. They should restrict themselves to procedural advice only.
- 19.13.1.4 It is recommended that Councillors should not lobby Councillors who are members of the Planning Committee regarding their concerns or views not attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 19.13.1.5 Councillors should not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other member to do so. Political Group Meetings should never dictate how members should vote on a planning issue. Political Group Meetings should not be held prior to Planning Committee.

### **19.14 TRAINING OF PLANNING COMMITTEE MEMBERS.**

- 19.14.1. The Council shall ensure that Members of the Planning Committee satisfactorily complete induction training before first serving on the Planning Committee and undertake from time to time additional/refresher training in accordance with a training programme agreed by the Council.
- 19.14.2 Attendance records for planning training events shall be monitored. A six monthly report shall be presented to the Principal Scrutiny Committee regarding presence by members on training events. A member of the Planning Committee who fails to attend the training sessions shall not be permitted to sit on the Planning Committee until such training has been completed. A new member of the Council shall undertake a training session before he/she is permitted to sit on the Planning Committee.

**19.15      TRAINING OF OTHER MEMBERS.**

- 19.15.1      Appropriate training for members who do not sit on the Planning Committee will be arranged so as to enable them to properly discharge the role of a Local Member.

**19.16.      PLANNING APPLICATIONS BY MEMBERS.**

- 19.16.1.      Where a planning application is made by a member, any such member should comply with the Members' Code of Conduct generally. However, the member will have the right to address the Committee as the applicant in accordance with the Rules on Public Speaking. Immediately after addressing the Committee the member should leave the Chamber whilst the application is discussed in accordance with the Members Code of Conduct.