

Section 39

Local Protocol for Planning Decision Making

Introduction

- **The aim of this local protocol** is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- **The key purpose of planning is** to control development in the public interest.
- **Your role as a member of the Planning Authority** is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- **When the local protocol applies** – it applies to Councillors at all times when involving themselves in the planning process. (This includes when taking part in the decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings).
- **Development Proposals and Interests under the Members' Code** – make sure that you disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Councillors.
- **Lobbying Councillors** – make sure that you explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Planning Control Committee's decision making to express an intention to vote one way or another or take such a firm point of view that it amounts to the same thing. Remember that your overriding duty is to the whole community.
- **Lobbying by Councillors** – do not become a member of, lead or represent an organisation whose primary purpose is to lobby or promote or oppose planning proposals. If you do, you have fettered your discretion and are likely to have a personal and prejudicial interest. Do join general interest groups which reflect your areas of interest, and which concentrate on issues beyond particular planning proposals, e.g., Victorian Society, a local Civic Society, but disclose a personal interest, where that organisation has made representations on a particular proposal.
- **Site Visits** – do try to attend site visits organised by the Council where possible. Do not request a site visit unless you feel that it is strictly necessary.

- **Decision-making** – come to a meeting of the Planning Control Committee with an open mind and demonstrate that you are open-minded. Make sure you come to a decision only after due consideration of all the information reasonably required upon which to base a decision. Do not take part in the meeting's discussion or vote on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. If you come to the meeting with a fixed view on a proposal or have made a clear statement in advance of the meeting for a particular outcome, you must declare that you have pre-determined the matter and take no part in the decision making other than addressing the Committee as a local Councillor.

If you have any doubts about the application of this protocol to your own circumstances, you should seek advice early from the Monitoring Officer or Deputy Monitoring Officer.

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1. Purpose of Protocol

- 1.1 Cannock Chase Council is a local planning authority and two of the most important responsibilities it has are to make decisions on planning and other applications made under the Town & Country Planning Acts and to prepare, adopt and review a Local Development Framework, which comprises a number of Development Plan Documents and Supplementary Planning Documents providing the policy context for decision making on applications.
- 1.2 The purpose of this Protocol is to explain how the Council carries out its planning duties and in particular how the decision-making processes work. It will be of particular interest to applicants for planning permission, people who may be affected by other people's planning proposals or those interested in the preparation of the Development Plan Documents and Supplementary Planning Documents.
- 1.3 The Council has adopted and published in leaflet form local charters for applicants, for publicity and information about planning applications and for those involved with a planning enforcement problem. These leaflets give more detail about the services the Council provides when it is dealing with these matters. The Council has also adopted a Statement of Community Involvement December 2018 setting out how it will inform, consult, and involve the community in the preparation of planning policy documents and the determination of planning applications.

2. The Role and Conduct of Councillors and Officers

- 2.1 Councillors and Officers have different, but complementary, roles. Both serve the public, but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and instructions may only be given to Officers through a Council, Cabinet or Committee decision.
- 2.2 Both Councillors and Officers are guided by codes of conduct. The Council's Code of Conduct based on the statutory Model Code provides guidance and standards for Councillors. Breaches of the Code may be reported to the Standards Board for England for investigations and may be regarded as maladministration by the Local Ombudsman.
- 2.3 Whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. The General Principles of Conduct issued by the Government state that Councillors should not favour any individuals or groups and, although they may take into account the views of others, they should reach their own conclusions on the issues before them and act in accordance with those conclusions. Councillors must, therefore, represent their constituents as a body and vote in the interests of the whole district especially when discharging their planning responsibilities.

- 2.4 Planning Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. The Code requires members not to make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions and to take all reasonable steps to ensure that all town planning matters in the organisations for which they have responsibility are conducted in accordance with the Code whoever undertakes such work. The Council is committed to upholding this principle in its role as local planning authority.

3. Declaration and Registration of Interests

- 3.1 The law and the Council's Code of Conduct set out requirements and guidance for Councillors, respectively, on declaring personal and prejudicial interests and the consequences of having such interests.
- 3.2 **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Councillors. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

Do then act accordingly. **Where your interest is personal and prejudicial** (i.e., where you have a personal interest, and that interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that is likely to prejudice your judgement of the public interest):

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- **Don't** try to represent ward views, get another Ward Member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate office, in person or in writing, the Code places limitations on you in representing that proposal. You may address the Committee but only to make a presentation in the same manner that would apply to a normal member of the public, after which you must leave the room whilst the meeting considers it (you may not remain to observe the meeting's considerations on it from the public gallery).

3.3 **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or both a District and County Councillor), provided:

- (i) The proposal does not substantially affect the well-being or financial standing of the consultee body.
- (ii) You make it clear to the consultee body that:
 - Your views are expressed on the limited information before you only.
 - You must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just the people in that area, Ward or Parish, as and when it comes before the Committee, and you hear all of the relevant information, and
 - You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- (iii) You disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.

3.4 Officers are required to follow the Council's Code of Conduct for Employees.

4. Development Proposals Submitted by Councillors and Officers and Development Proposals by the Council

4.1 Serving Councillors who act as agents for people pursuing a planning matter within their authority will play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the authority, they will take no part in its processing.

4.2 Proposals of this nature will be identified and the Head of Economic Development and Planning and the Chair of the Planning Control Committee will decide whether, in all the circumstances, the application should be referred to the Committee for determination. The same approach will be taken in respect of applications submitted on behalf of the Council itself or by any of its officers.

5. Lobbying of and by Councillors

5.1 Lobbying is a normal and perfectly proper part of the political process and applicants or third parties who may be affected by a planning decision may choose to approach their elected Ward Councillors or members of the Planning Control Committee to put their point of view in addition to discussing matters with planning officers. Members of the Planning Control Committee must take care about expressing an opinion that may be taken to indicate that they have already made their mind up on a planning proposal before they have had an opportunity to consider all the evidence and arguments.

5.2 A Ward Councillor who is not a member of the Planning Control Committee may respond to lobbying by declaring their support for a particular outcome and may address the meeting of the Planning Control Committee which is to determine the application. The Councillor will be given the same amount of time to speak as a member of the public i.e., 10 minutes (see Annex A).

- 5.3 A Ward Councillor who is also a member of the Planning Control Committee must make a clear choice in response to lobbying either to:
- (i) inform the lobbyist that they must maintain a neutral position on the proposal until the meeting, which is due to determine it, when they will have read the report and listened to any discussion there may be about the proposal, in order to carry out their job as decision maker in an even handed way (a standard written response could be used for the purpose), or
 - (ii) decide to declare support for a particular outcome but then declare at the Committee meeting that they have pre-determined the decision and take no part in the decision making other than addressing the Committee as a Ward Councillor.

This does not apply if the Ward Councillor has a prejudicial interest which arises from their own personal circumstances. In that case, the Councillor may make representations to the Planning Control Committee and answer questions as a member of public would be able to but must then leave the room and take no part in the decision making.

6. Pre-application Discussions and Negotiations During the Processing of Applications

- 6.1 An important part of the planning service provided by the Council is the advice given by Officers to both applicants and people affected by planning proposals both before the submission of applications and during the processing of applications. It is considered to be a more effective use of resources to give advice to applicants to enable them to present their applications in a manner which meets the appropriate planning policy requirements first time rather than not to do so which could result in more applications being refused and having to be resubmitted or determined at appeal.
- 6.2 The following principles will apply to the giving of advice:
- (i) It will always be made clear that any advice cannot bind the Council to making a particular decision.
 - (ii) Advice will be based solely upon approved policy considerations contained in the development plan, approved supplementary planning guidance and in appropriate cases government planning guidance.
 - (iii) When Councillors are requested to advise, the meeting will take place in the presence of an appropriate Officer.
 - (iv) A written record of the meeting including any agreed outcome will be made and placed on the case file.
- 6.3 These protocols relate to the giving advice on planning policy. Advice on procedure can be given by individual Officers or Councillors at any time.

7. Decision Making Procedures

- 7.1 The Council is required to prepare Development Plan Documents (DPD's) and (if appropriate) Supplementary Planning Documents (SPD's) to provide a robust local planning policy context for decision making on planning applications. Public consultation in accordance with the principles set out in the Council's adopted Statement of Community Involvement December 2018 is carried out at specific stages in the preparation of DPD's which are adopted following an independent examination by an Inspector acting on behalf of the Secretary of State for Communities and Local Government.
- 7.2 Decisions to take formal DPD's through their stages as far as preferred options are taken by the Cabinet and decisions to submit documents for examination and formally adopt them are taken by the Council. Decisions to adopt SPD's are taken by Cabinet.
- 7.3 The policies and proposals in the District's DPD's when adopted and the adopted Regional Spatial Strategy (RSS) are the most important matters to inform decision making on planning applications together with the policies contained in SPD's which give more detailed guidance on specific planning subjects, e.g., affordable housing, open space, sport, and recreation. There is a presumption that decisions should be made in accordance with policies in these documents with most weight to be given to policies in the Development Plan (DPD's and RSS).
- 7.4 **Decisions on planning and other applications** submitted under the Town & Country Planning Acts including applications for listed building consent, conservation area consent, consent to display an advertisement (referred to and defined as Planning Applications under paragraph 7.4(A)(1) below) are made by one of the following two methods:
- (A) **By the Head of Service or a manager in the Planning Division in the following circumstances:**
- All applications seeking planning consent that have been duly accepted for determination by the Council ("Planning Applications") that are not referred to the Planning Control Committee under the Scheme of Delegation.
- (B) **Council's Planning Control Committee:**
- All planning applications that are referred to the Planning Control Committee under the Council's Scheme of Delegations.
- 7.5 Decisions to make **Tree Preservation Orders** (TPO) are made by senior officers. Where there is an unresolved objection to a proposed TPO the final decision on these matters is also made by the Planning Control Committee.
- 7.6 The Planning Control Committee normally meets once every 4 weeks. It considers reports prepared by planning officers which make an assessment of all the relevant planning issues, summarise all comments received and make a recommendation to approve or refuse the application with appropriate reasons based on national and local planning policies.

A recommendation of approval may include conditions to ensure that the proposed development meets with the appropriate planning requirements. It may also require the applicant to complete a planning obligation (S106 of the Town & Country Planning Act 1990) to deal with the effects of the development on the local area in a way which cannot be controlled by a planning condition (see Section 8 below). The Committee decides whether or not to accept the recommendation. It may defer consideration of the application to seek further information or to enable a site inspection to take place (see 7.8 below).

The procedures at Planning Control Committee provide for the applicant, a maximum of two objectors, Ward Councillors, and a representative of a Parish Council to address the Committee before it makes a decision on a planning application, TPO. Full details of the operating rules for people to address the Committee are set out in Annex 'A.'

7.7 Site Inspections by members of the Planning Control Committee.

7.8 Inspections can be made to sites which are the subject of planning applications or TPOs in the following circumstances:

- (i) When officers recommend an inspection in advance of producing a report so that if the Chair, or in their absence, the Vice-Chair, of the Committee agrees, the inspection can take place on the day the Committee meets to consider the report on the application.
- (ii) When the Committee decides it needs to defer a decision on an application in order for a site inspection to take place.

7.9 In all cases clear and relevant planning reasons must be given as to why an inspection is considered necessary and what it would be likely to achieve. As a general principle an inspection is only likely to be appropriate when it will clarify, or supplement information contained in the officer's written report and that information cannot be obtained in another way. It will not be appropriate for an inspection to take place merely because a consultee or neighbour has requested it unless Councillors can identify clear and relevant planning reasons.

7.10 The purpose of the inspection is to obtain additional information about a proposal by looking at the site and the surroundings. It is not an opportunity to discuss the merits of the proposal with the applicant or objectors. Representations from applicants and third parties will therefore not be permitted. The following procedure will apply:

- (i) The inspection will be managed by the Chair of the Committee or in their absence the Vice Chair.
- (ii) Applicants will be informed of the time of the inspection but not invited to participate other than to allow access to land or property if appropriate.
- (iii) Officers will attend to give a brief explanation of the proposal and answer any questions from Councillors
- (iv) Officers will make a brief note of the inspection including a record of which members attended and any new factual information which may have been brought out. This will be placed on the case file.

- (v) Third parties (objectors) are not invited to inspections and would not be entitled to enter the site unless invited to do so by the applicant. If objectors are present with the consent of the applicant, they may listen to the officers' explanation and Councillors' discussion but not participate.

8. Planning Obligations (S106 Agreements)

- 8.1 In order to mitigate the impact of development on the environment, deal effectively with transport, other infrastructure and community facility requirements generated by new development, agreements under S106 of the Town & Country Planning Act 1990 are negotiated with developers prior to the grant of planning permission. In some cases, developers may offer unilaterally to make such provision.
- 8.2 These planning obligations whether made by agreement or unilaterally are required to ensure that development complies with the appropriate policies in the Development Plan and may include making payments to the District Council or County Council to enable facilities such as open space and school buildings to be provided.

The fact that payments need to be made in order to secure the grant of a planning permission can give rise to a misunderstanding that somehow developers are 'buying' a planning permission. This is not the case but is a legitimate means of ensuring that the appropriate planning requirements are met. In order to ensure a consistent approach to negotiating obligations the Council has adopted a Supplementary Planning Document entitled 'Developer Contributions.'

- 8.3 For the purpose of this Protocol two key elements of the Supplementary Planning Document are important:
 - (i) The issues to be dealt with by an obligation will be described in sufficient detail in the report on the planning application to be considered by the Planning Control Committee. This will include financial information if it is available at this stage.
 - (ii) The completed obligation will be placed on deposit in the planning register at the same time as a copy of the related planning permission.

9. Decisions Contrary to Officer Recommendation and/or the Development Plan

- 9.1 Planning is not an exact science. It relies on making informed judgements within a firm policy context. The weight given to particular planning considerations in a specific case can make a difference to the final outcome and it is perfectly justifiable for the Committee to give different weights to issues than those given by Officers and thereby reach a different overall conclusion to that recommended by officers.
- 9.2 It may be clear from the original Officers' report when a conclusion to recommend approval is reached 'on balance' that there are sustainable reasons which can be adduced to support a decision to refuse planning permission, and these may be brought out at the Committee meeting. In other cases, the reasons may need further consideration in which case it may be appropriate for the matter to be deferred to determine at the next meeting. When the Committee wish to approve an application contrary to the officer recommendation of refusal, deferral may also be necessary to enable appropriate conditions to attach to the approval to be drafted.

- 9.3 **Do** make sure that if you are proposing, seconding, or supporting a decision contrary to officer recommendations or the Development Plan that you clearly identify and understand the **planning reasons** leading to this conclusion / decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.
- 9.4 When it is intended to approve an application, which is contrary to the Development Plan, the material planning considerations which are judged to be more significant than the policies in the plan will be clearly identified in the report. In some cases, the Secretary of State for Communities and Local Government must be informed and may decide not to permit the Council to approve the application but instead make the decision himself after holding a Local Public Inquiry.

10. Access to Information

- 10.1 The whole of the process of determining planning applications takes place in an open and accessible manner. Applications are deposited on a public register and all background information including any letters of objection or support for an application are available for inspection by law 5 clear working days before the application is due to be determined by the Committee. If an application is subject to an appeal the Council's and the appellant's evidence are made available for inspection and if people wish to express an opinion in writing or at a local inquiry or hearing they may do so.
- 10.2 The Council is committed to making the process as open and accessible to people as possible within the financial constraints it has to operate. It therefore provides the following services in addition to the minimum statutory requirements:
- (i) Copies of planning applications are deposited at the Civic Centre. Parish Councils are provided with copies of planning applications and the decisions made on them.
 - (ii) A copy of any agreement or obligation made under the Town & Country Planning Act to provide for measures, financial or otherwise, to enable a proposed development to comply with the planning requirements is included in the planning register.
 - (iii) All planning application case files are available for inspection **by appointment** at any time.

11. Comments, Compliments and Complaints

- 11.1 Cannock Chase Council is committed to serving the community in the most efficient and courteous way possible. We welcome your comments, compliments, and complaints as this helps us to know what are the good things about our services and what things we need to improve. If you wish to make a comment, compliment, or complaint a 'How To' form is available at the Council Offices in Cannock:

Cannock Chase Council, Civic Centre, Beecroft Road, Cannock, WS11 1BG
Telephone: (01543) 462 621

- 11.2 A complaint can only be investigated if it relates to the way a matter was dealt with rather than the actual outcome i.e., the fact that this Council made a planning decision which people disagree with is not a basis for lodging a complaint.

Protocols for Public Speaking at Planning Control Committee

1. Protocols

1.1 Who is Entitled to Speak

- (i) In relation to a planning application:
 - (a) The applicant or a person representing the applicant.
 - (b) A supporter of the application.
 - (c) An objector who is acting on their behalf or on behalf of a group of objectors or a person representing objectors. Normally, only one person will be permitted to speak on behalf of all objectors unless it can be demonstrated that there are significantly differing points of view that are wished to be expressed when a maximum of two people will be permitted to speak.
 - (d) A Ward Councillor(s).
 - (e) A representative of the Parish Council.
- (ii) In relation to Tree Preservation Orders:
 - (a) A person or representative of a person supporting the making of an order.
 - (b) A person or representative of a person objecting to the making of an order.
 - (c) A Ward Councillor(s)
 - (d) A representative of the Parish Council.

1.2 Making an Application to Speak

Requests to speak must be made by completing an application form obtainable from the Planning Control Unit at the Civic Centre. The completed form must be delivered to the Civic Centre by, at the latest, 3:00pm on the Monday before the meeting of the Planning Control Committee due to take place on the Wednesday. Receipt of the completed form will be acknowledged in writing. Ward Councillors need not complete an application form but should inform the Chair of the Planning Control Committee that they wish to speak on a particular application.

1.3 Procedure following Receipt of Application to Speak

If an application to speak has been received from one of the parties, other than a Ward Councillor, officers will use their best endeavours to contact the other parties to give them an opportunity of speaking if they so wish. In cases where there are a large number of objectors, it may not be possible to contact everyone.

As information about speaking rights will already have been sent to applicants, people notified of applications and Parish Councils at an early stage in the processing of an application, failure to contact other parties following receipt of an application to speak from one of them will not invalidate the procedure. No contact will be made in writing at this stage.

1.4 Procedure at the Meeting

Applications and other matters on which there are speakers will be dealt with at the start of the meeting. The procedure for dealing with these matters will be as follows:

- (i) An officer will give a verbal report updating the written report with any information received after its completion.
- (ii) Speakers will be called to speak in the following order:
 - objector(s);
 - Parish;
 - Ward Councillor(s)
 - A supporter of the application
 - Applicant or supporter or alleged contravener (where applicable)
- (iii) Speeches must last no longer than TEN MINUTES. Speakers may not circulate or present any new or additional written documents, drawings, or photographs. The Chair will invite the speaker to sum up before the ten-minute time limit is reached.
- (iv) Members of the Planning Control Committee may then ask questions of any of the speakers.
- (v) The Planning Officer may then answer any points arising from the speeches.
- (vi) The speakers will then withdraw to the public gallery and a decision will be made following whatever further discussions members of the Planning Control Committee wish to have.
- (vii) In the event that Committee decide to defer a decision before any speakers have been called to speak on the matter speakers will be invited to decide whether they wish to defer their speeches until the deferred date. Only one opportunity to speak will be allowed.
- (viii) In the event that the Committee decide to defer consideration of a matter after any speaker has addressed the Committee on that matter all the speakers on that matter will be allowed to speak again on the deferred date. If a speaker is unavailable on that date, they may nominate a substitute to speak on their behalf.

1.5 Procedure after the Meeting

Speakers will be sent written notification of the Planning Control Committee's decision.

1.6 Chair

The ruling of the Chair of the meeting as to the construction or application of any of the above shall not be challenged.

Application to Speak at a Meeting of the Planning Control Committee

1.1 Please read the notes before you complete your application (please complete in block capitals)

1.2 Name: _____

1.3 Address: _____

1.4 Daytime Tel. No _____

1.5 Fax No. _____

1.6 Purpose of wishing to speak (tick appropriate box):-

- | | |
|--|--------------------------|
| As applicant or on behalf of applicant | ☐ |
| A supporter of the application | ☐ |
| As objector to a planning application or on behalf of objector | ☐ |
| As supporter of a Tree Preservation Order | ☐ |
| As objector to a Tree Preservation Order | ☐ |
| As complainant concerning a planning enforcement issue | ☐ |
| As person alleged to be in contravention of planning regulations | ☐ |
| As representative of a Parish Council | ☐ |

1.7 Details of Planning Application, Tree Preservation Order or Enforcement Case which you wish to speak on:-

(i) Description: _____

(ii) Reference No. _____

1.8 You are reminded that when addressing the Committee, you must not make a defamatory statement. If you do make a defamatory statement, action may be taken against you.

1.9 **The length of the speech must not exceed 10 minutes.**

Signature: _____ Date: _____

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