

Development and Regulation Committee Protocol



Essex County Council

**Development and Regulation Committee
Revised January 2024**

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This Protocol has been prepared to clearly set out the way in which the Development and Regulation Committee will conduct its business in relation to its consideration of planning applications.

1. Summary

No Member shall be appointed to the Development and Regulation Committee without having agreed to undertake a period of training in planning procedures as specified by the Authority. This is in addition to any training the Member may previously have undertaken at any other authority.

Members and officers shall avoid indicating the likely decision on an application or otherwise committing the Authority during contact with applicants and objectors.

Members must make oral declarations at the Development and Regulation Committee of significant contact with applicants and objectors, in addition to the usual declarations of disclosable pecuniary interests, other registrable interests and non-registrable interests.

All applications considered by the Development and Regulation Committee shall be the subject of full, written reports from officers incorporating firm recommendations.

The reasons given by the Development and Regulation Committee for refusing or granting an application shall be set out in the minutes, especially where these are contrary to officer advice or the development plan.

2. Basic Principles

Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they potentially affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the development plan and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.

One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. 'The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way....' (*Probity in Planning: The Role of Councillors and Officers' May 2009 (Revised guidance note on good planning practice for councillors and officer dealing with planning matters).LGA*).

The basis of the planning system is the consideration of private proposals against wider public interests.

The successful operation of the planning system relies on ensuring that officers and Members act in a way that is not only fair but is clearly seen to be so.

Members have a special duty to their constituents, but their overriding duty is to the whole community of Essex. They should vote in the interests of the whole county in relation to planning matters. However, there is no reason why a local Member should not participate in the decision making process for a particular planning application, provided that he/she has abided by the Protocol.

Planning applications submitted by the County Council (ECC) for its own development will be treated in the same way as those for private developers, both in terms of procedures and the assessment of material planning considerations.

The Public Sector Equality Duty applies to all planning decisions. A local authority must, when making a decision, have due regard to the need to eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between people who share a protected characteristic and people who do not share it; and foster good relations between people who share a protected characteristic and people who do not share it. The duty should be explicitly taken into account in determining planning applications and deciding on enforcement action.

3. Member Training

It is fundamental that Members involved in planning should receive appropriate training.

No Member should be appointed to the Development and Regulation Committee without having agreed to undertake mandatory training in planning procedures relating to County Matters as specified by the Authority ^{Note 1}. This is in addition to any training the Member

¹ Member Development Steering Group September 2013 and 12 November 2013

may previously have undertaken elsewhere. Such mandatory training will also be required for preferred substitutes.

In addition, the Chairman of the Committee expects Members to take advantage of the monthly training sessions provided.

4. Declaration of Personal and Pecuniary Interests and Predetermination/Bias

When considering a planning matter, it is important to have in mind whether a Councillor has an interest in it and the consequences of that interest for whether the Councillor may take part in that matter.

The main rules are set out in the Code of Conduct which are in part 24 of the ECC [constitution](#).

Disclosable Pecuniary Interests (DPIs)

All Councillors are required to register their DPIs when first elected. The register must be kept up to date. If a matter closely relates to one of the Member's disclosable pecuniary interests, the Councillor must disclose the interest at the meeting and, if it is not already registered, advise the Monitoring Officer about it within 28 days.

If a Councillor has a DPI and that interest relates to a matter being considered at a meeting of the Committee, the Councillor should disclose it and leave the room unless they have a dispensation. For complete clarity this means that they should not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting, or take any steps, or any further steps, in relation to the matter.

It is a criminal offence if a Councillor fails, without reasonable excuse, to register or declare DPIs, or takes part in council business at meetings.

DPIs usually relate to the interests of the Councillor or their spouse, civil partner or someone they are living with as a spouse or civil partner and the statutory definition is set out in the Code of Conduct which forms part 24 of the ECC [constitution](#).

DPIs and membership of other authorities

Many Essex County Councillors are also members of other local authorities. If the Councillor receives an allowance as a member of the other authority, that membership is a DPI and must be registered.

Membership of another local authority may sometimes give rise to a DPI in a planning application. Members must withdraw if they have a DPI in the matter. In practice this will only arise if the other authority is the applicant or has such a strong interest in the application that it would affect that organisation.

Whether or not this will apply will be a matter of judgment in each case. The most significant factor to take into account is the impact of the proposal on the other authority. Members should note that the dispensation given to 'twin hatted' members does not extend to determining planning applications.

The fact that a Councillor is a member of a local authority which has been consulted on a planning application would not of itself normally prevent participation as a member of Development and Regulation Committee. However, if the response to the consultation makes it clear that the proposal substantially affects the well-being or financial position of the consultee body, the Councillor may have a DPI in the application.

If the Councillor is involved in any discussion at the consultee body which relates to this application, it is helpful if the Councillor makes it clear during the discussion at the consultee body that:

- any view expressed is based on the information before them and they are not expressing a final view and,
- if they are involved in the Development and Regulation Committee, they will need to make up their mind at the committee meeting, based on the information they have at that time.

Interests other than DPIs

ECC, like most Essex local authorities, has adopted the LGA Model Code of Conduct. This includes rules about declaring 'Other Registrable Interests' and 'Non-Registrable Interests'. These are set out in full in the Code of Conduct, but a quick summary is below.

Other Registerable Interests

If an application affects an Other Registrable Interest, then you must always declare it. You must also leave the room (other than to speak as a member of the public) if it directly relates to that interest or if a member of the public who knew all the facts would believe it would affect your view of the wider public interest.

Disclosure of Non-Registerable Interests

In summary, if a matter affects your financial interest or well-being (and is not a DPI set out in the Code) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You must also leave the room (other than to speak as a member of the public) if it directly relates to that interest or if a member of the public who knew all the facts would believe it would affect your view of the wider public interest.

Advice

Should members be concerned about declaring and registering interests, they are encouraged to speak to the Monitoring Officer or his representative as soon as possible and in advance of the meeting. Members should attend the annual Code of Conduct training.

Law of Bias

The law of bias applies to decisions taken by the Council and, in practice, planning decisions present a higher risk of being challenged on this ground.

The test is "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased". Examples of where decisions have been ruled to be biased include:

- A family relationship or close friendship between the decision-maker and the beneficiary of the decision;
- A connection between the member of the committee and an external consultant;
- Planning committee members who had season tickets for a football club and did not disclose this when deciding an application by the club.

Law of Predetermination

The law is that decision makers must approach their decision with an open mind. Again, if they fail to do so it can be a ground for challenging planning decisions.

The position in relation to pre-determination has been clarified and confirmed by the Localism Act 2011 which provides that *'A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision **just because** the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take'*.

The Courts recognise that Councillors are representatives of the community and in that role, it is sometimes necessary to give a provisional view or to be "predisposed" to a particular view. In such situations a Councillor should think carefully how they express their view so as not to give the impression that they have already finally "made up their mind" on the matter.

In many cases the Councillor is simply expressing a view on the limited information available at the consultation stage and is only predisposed to the view expressed. This also applies to the situation when a Councillor is on a body that is consulted on a planning application.

It is important that:

- (a) Councillors do not take part in the debate or vote on a decision if they feel that they cannot approach a decision with an open mind. If a Councillor believes that they have predetermined a matter before the meeting, they must not take part in that item, and
- (b) Councillors who have embarked on a lengthy campaign on a matter and may be considered to have done more than directly or indirectly indicated their view should not take part in that item.

Failure to do follow these requirements could result in a claim of maladministration or even the initiation of High Court Proceedings against the Council to quash the decision.

If any Councillor is concerned about whether they may have predetermined an issue they should contact the Monitoring Officer for further advice.

5. Lobbying of Councillors

Lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a decision of the Committee may seek to influence it through an approach to their elected representative or to a Committee Member. However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Committee Member being called into question.

For many reasons it is better if Committee Members do not express their view on any planning application prior to its consideration at Committee. This helps to show the public that the decision made by the Committee will be determined fairly on the information provided to the Committee.

There may, however, be circumstances when a Committee Member considers that they wish to express an initial view before the Committee. If so, it is essential that the Member makes it clear that they are only expressing an initial view and that their final decision will be made at the Committee when all information will be available. For further information on predetermination Councillors should consider the section on Predetermination/Bias.

A Councillor who represents the electoral division that is affected by a decision of the Committee may be subject to intense and passionate lobbying on matters within their division. Where a Committee Member feels that it is appropriate to express an initial view it is more likely that the lobbyists could misunderstand the view expressed and are more likely to consider making a complaint or even commencing legal proceedings. For this reason, a Committee Member should make it very clear that their view is only provisional and that their mind is not closed to new information that is provided at Committee.

If a Committee Member feels obliged to express a final view or join in a campaign for or against the proposal, they should declare that they have predetermined the issue and not debate or vote on the issue. However, he/she may attend and speak at a Committee meeting as a local Member before the case is debated.

All Councillors are reminded that if they do not wish to represent the views of a lobbyist, they can always advise the individual that the public may speak to the Committee as described in the section on public speaking or submit their representations in writing.

Committee Members must not organise support or opposition for a proposal or lobby other Councillors (other than when addressing the Committee). Such actions can easily be misunderstood by parties to the application and the general public. More importantly, the Committee Member might be accused of having predetermined the matter.

6. Pre-Application/Post Submission Discussions, and Attendance at Public Meetings

Constructive pre-application discussions between potential applicants and planning officers have long been recognised as good practice, helping to ensure all relevant considerations are addressed when an application is submitted. As there is a strong need to allow and encourage Councillors to be champions of their local communities, there has followed a realisation that Councillor engagement in pre-application discussions on major development is increasingly necessary to allow Councillors to fulfil this role.

A Councillor's engagement in pre-application discussions is not intended to be an opportunity for the Councillor to give their views on the proposal – whether or not they are in a position to give a preliminary view on a proposal. However, Committee Members should not express a view which may pre-determine their position at the Committee meeting. If a Committee Member decides to express anything but a preliminary view, or at this stage decides to give support to a view on behalf of their community or division in support of their 'community champion' role, then this pre-determined position will require the Committee Member to stand aside from the determination process of any subsequent planning application. If a Committee Member wishes to make it clear that any views expressed are those of their constituents and are not necessarily their own, then this is acceptable provided that it cannot be claimed that the Member has pre-determined the matter.

It will sometimes be possible for a local Councillor who does not sit on the Committee to represent views on behalf of their communities, whilst Development and Regulation Committee Members restrict themselves to questions or clarification.

Transparent process will help to minimise the risk of challenges based on suspicion that Councillors may have predetermined their position or become biased by being involved in pre-application discussions. Often open public meetings, with the developer present, will assist in making the pre-application process transparent.

The following protocols for pre-application discussions should apply:

- Officers should always be present at a meeting with the applicant or their representative;
- At the start of the meeting the Chairman or Case Officer will explain the role of Councillors present at any pre-application discussion and this will be recorded in a note of the meeting;
- A Committee Member's role in pre-application discussions is to learn about the emerging proposal, identify issues to be dealt with in any further submissions, but not to express a view on the proposal as to pre-determine their view on any formal application;
- Discussions do not have to take place in public;
- A note of those present, the issues discussed, and any actions will be made. This note will be placed on a public file by the Case Officer. This helps protect the Councillor and the Authority by detailing what issues were discussed and that no pre-determination arose.

In addition, Councillors may be invited to public pre-application or public/developer presentations to the Council on major applications.

7. Officer Reports to Committee

All applications considered by the Development and Regulation Committee shall be the subject of full, written reports from officers incorporating firm recommendations. The reports will consider national and development plan policies and guidance, representations made by statutory consultees, local residents and other interested parties, as well as any other material considerations. The report will contain all the relevant material known at the time the report is despatched to Members and updating information will be provided to Committee Members only if there have been any significant developments or changes to the report.

Once the Committee papers for a meeting have been published, any subsequent information that is received containing material planning considerations will be presented in an addendum and/or reported orally by officers to the Development and Regulation Committee at its meeting. Any additional information or changes will also be published on the Council's website, as soon as it is available.

Proposals for the County Council's own development sometimes fall to be determined by the Development and Regulation Committee. These will be treated in the same way as any application submitted by a private developer. The requirements of the Town and Country Planning and other Acts, regulations and Government guidance will be followed in the usual way. Decisions will be made strictly on planning merits without regard to any financial or other gain or loss that might accrue to the Council if the development is permitted. The

County Council recognises that its own planning applications must not only be treated no differently from any other but should be seen not to be treated differently.

Similarly, the Committee will not take into account any implications for the County Council financial or other gain or loss that might arise from any applications for minerals and waste development.

The agenda and reports for the Committee will, other than in exceptional circumstances, be published at least five clear days before a Committee meeting (excluding the day of publication and the day of the meeting) and will be available for public inspection on the County Council's website, www.essex.gov.uk.

8. Substitute Members, and Attendance of Non-Members at Meetings

The Council's rules on these issues are set out in the Council Procedure Rules.

The rules governing Substitute Members provide that a Committee Member shall, if he/she wishes another Member of the political group to which he/she belongs to attend a meeting of that Committee in their place, give the Committee Administrator written notice not later than 9.30 a.m. on the day on which the meeting is to be held that he/she is unable to attend and that the substitute Member named in the notice will attend in their place. A substitution notice may be given on behalf of a Committee Member by the leader of a political group or by the group spokesman of the Committee.

The effect of a substitution notice shall be that the Member named in the notice shall cease to be a Member of the Committee for the duration of that meeting and that the substitute Member shall be a full Member of the Committee for the same period.

A substitution notice may be revoked at any time preceding the deadline for the giving of such notice.

In the case of the Development and Regulation Committee there is a system of preferred substitutes, whereby each political group has nominated those Members who are to be used as substitutes in the first instance.

The scheme of preferred substitutes has been developed in response to the need for mandatory Member Training in the issues that the Committee consider.

Any County Councillor shall be able to attend any Committee meeting of which he or she is not a member and, if invited to do so by the Chairman of the meeting, may speak at the Committee meeting, but not take part in a discussion nor any vote. It must be stressed that a Member of the Council who is not a Member of the Committee may not speak unless that Member has obtained the agreement of the Chairman. Any County Councillor who is not a Member of the Development and Regulation Committee and wishes to address the Committee on an application at one of its meetings is limited to speaking for no more than three minutes subject to the discretion of the Chairman.

9. Public Speaking at Committee

Arrangements have been developed to enable applicants or their agent, objectors and other interested parties to address the Committee, and are detailed in a separate document entitled 'Public Speaking at the Development and Regulation Committee'.

Generally only one prospective speaker will be allowed to speak from each of the following categories:-

- District/Borough/City Council (to speak on behalf of the relevant Parish Council unless that Parish Council's view is different, in which case the Parish Council may also speak).
- Objector
- Applicant
- Supporter

Anyone wishing to speak at a meeting must give two working days' notice to the Committee Officer (email democratic.services@essex.gov.uk) and shall then submit a supporting paper outlining the main points of the presentation also at least two working days prior to the meeting. This is to enable the points they wish to raise to be fully considered at the meeting.

Each presentation will be limited to **three** minutes, though the time limits and number of speakers may be varied at the discretion of the Chairman of the Committee, particularly for major strategic applications.

Under normal circumstances public speaking will only be permitted when a planning application is considered for the first time by the Committee. Therefore, if the application is deferred, a further presentation to the Committee will not normally be permitted unless new and significant factors have arisen or unless the Committee considers the matter from the beginning.

A County Councillor who is unable to take part in a debate because of their interests, bias or predetermination will be afforded the same speaking rights as a member of the public but must leave the room after they have spoken.

10. Determination of Applications

Section 38(6) of the Planning and Compulsory Purchase Act 2004, states that *"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"*.

The County Council recognises that planning decisions are often matters of fine judgement where the balancing of considerations is difficult. The officer's report will normally rely heavily on planning policy and Members of the Committee may wish to exercise their discretion to permit an application as an exception to policy or may not agree with the recommendation. In such cases the procedural requirement is that they should formally move a motion to take the place of the officer's recommendation.

A Member of the Committee may only vote upon a recommendation if he or she has been present for the full debate on the application.

Proposing, seconding and subsequently voting on a proposal should only take place once the Chairman concludes that there has been sufficient debate on the application so that members have had a reasonable opportunity to discuss the points raised in the officer's presentation and any subsequent points of clarification.

Where the Development and Regulation Committee is minded to determine an application contrary to the Officer's recommendation (whether for approval or refusal), the onus is upon the Committee to identify its reasons for the decision, which should be based on material

planning considerations. The final decision on the application will usually be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that Officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval (including recommending suitable planning conditions) or refusal of the application.

There will be full and accurate minuting of resolutions with a careful record being kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise, or cause to be summarised, the salient points of the debate, and ensure the text of the proposition is clearly understood before putting the matter to the vote.

Chairman

From time to time it may be appropriate for the Chairman to use their discretion in the consideration of an application to enable the Committee to conduct its business in a proper manner for instance to permit or not permit further speakers on an item and in seeking the Committee's agreement to an adjournment of a meeting or deferral of the item until, for example, a site visit has taken place.

11. Committee Site Visits

Formal site visits will only be held where there is a clearly identified benefit to be gained from holding one i.e. where a proposal is contentious or particularly complex, and the impact is difficult to visualise or assess from the submitted information and plans contained in the information before the Committee. Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial.

The Committee must be mindful that site visits should be organised carefully to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to.

All Members of the Committee will be invited to attend the site visit, together with the local Member(s). No other parties will normally be invited to take part in the site visit.

All Members attending site visits should be accompanied by an officer. If access to private land is necessary, officers will secure the prior agreement of the landowner/operator/applicant who will be advised that lobbying Members of the Committee is unacceptable.

The Committee cannot determine the application on a site visit. The visit should at all times be run similar to the strict lines of a Planning Inspector's site inspection – i.e. not allowing arguments and views to be expressed on site.

The purpose of the site visit is to view the site. Therefore, any issues that are not consistent with Members familiarising themselves with the site should be prevented. The site visit shall consist simply of an inspection by the Committee with officer assistance. Members may raise questions, but answers will be reported to the formal meeting of the Committee, and be discussed in public.

The role of the local Councillor who is not a Committee Member is limited only to pointing out parts of the site he/she thinks are relevant to the Committee Members becoming familiar with the site and its setting. The local Councillor shall not make representations on the application at the site meeting.

The Committee Officer will arrange for transport for the site visit for all Members and officers from County Hall. Any Member wishing to meet the Committee locally must liaise with the Committee Officer to make appropriate arrangements to be picked up at a suitable location. However, a Member should not meet the Committee at the application site unaccompanied by an officer. Members of the Committee should be especially careful when arriving at the site alone, as this may present an opportunity for lobbyists to attempt to influence the Member informally.

12. Officers

Councillors and officers have different but complementary roles. Both serve the public, but Councillors are responsible to the electorate, whilst 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 it follows that instructions may only be given to officers through a decision of the Council or its Executive or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other's positions. This relationship and the trust which underpins it must never be abused or compromised.

Officers involved in the processing and determination of planning matters must act impartially and in accordance with the Council's appropriate Codes of Conduct and any professional code of conduct (primarily the Royal Town Planning Institute's Code of Professional Conduct). As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

Councillors should not do anything which compromises, or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority. Officers are part of a management structure and Councillors should only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.

Councillors should not put pressure on officers to put forward a particular recommendation on a planning application. However, this does not prevent the Councillor from asking questions or submitting views to the Planning Officer, which may be incorporated into any committee report.

For more information see the protocol on member/officer relations in Part 25 of the [Constitution](#).

13. Reviewing Decisions

As a commitment to ongoing best practice Members of the Committee will from time-to-time be asked to revisit a sample of sites of implemented planning permissions to assess the quality of the decisions. These reviews will play a valuable part in Member training as well as help the Committee improve the quality and consistency of decision making, strengthen the public confidence in the planning system and help with reviews of planning policy.

14. Possible Consequences of a Breach of the Protocol

As this Protocol has been approved by the Development and Regulation Committee it is binding on all Councillors. Moreover, it is a statement by the Council about the proper way Councillors should conduct themselves as Members of the Committee. Therefore, any contravention of it could be seen as a basis for a complaint to the Local Government and Social Care Ombudsman on the grounds that maladministration has occurred that has caused injustice; the maladministration being a failure to make a determination in accordance with the Committee's own Protocol.

This document has been produced jointly by the County Planning Team and Legal and Assurance Teams.