



**BRECON BEACONS
NATIONAL PARK AUTHORITY**

PLANNING PROTOCOL

Approved on 30 January 2004

**BRECON BEACONS NATIONAL PARK AUTHORITY
PLANNING PROTOCOL**

CONTENTS	Page
1.INTRODUCTION	3
Purpose	3
Application	4
Code of Conduct	5
2. LOBBYING	5
3. MEMBERSHIP OF ANOTHER LOCAL AUTHORITY	7
4. FORMAL SITE VISITS	8
5. MEETINGS OF THE DEVELOPMENT CONTROL COMMITTEE	9
6. DECISIONS CONTRARY TO OFFICER RECOMMENDATIONS AND/OR THE DEVELOPMENT PLAN	11
7. DEVELOPMENT PROPOSALS BY MEMBERS/OFFICERS	12
8. TRAINING AND MONITORING	13
9. COMPLAINTS/RECORD-KEEPING	14

1. INTRODUCTION

Purpose

1.1 This Planning Protocol has been adopted by the Brecon Beacons National Park Authority to govern the performance of its planning function. The Protocol has the following objectives:

- To guide Members of the Authority in dealing with planning related matters
- To provide more detailed guidance on the standards to be applied specifically in relation to planning matters
- To apply internal rules to the way in which the Authority will deal with planning matters
- To inform potential users of the planning service, and members of the public generally, of the standards adopted by the Authority in the performance of its planning function.

1.2 The Planning Protocol is separate from and in addition to the Authority's Code of Conduct for Members which was adopted by the Authority on 23 November 2001 although some provisions of the Protocol may to a certain extent deal with issues which are also dealt with by the Code of Conduct. It aims to reflect the Local Government Association's update to its guidance entitled "Probity in Planning – The Role of Members and Officers" (2002). That document is annexed to this Protocol.

1.3 It is useful to include here the following extract from the LGA guidance -.

*The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst members should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. **Members who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.***
[para 5.4]

- 1.4 This Protocol was approved by the full Authority on 30 January 2004. It applies from that date.
- 1.5 The provisions of this Planning Protocol are designed to ensure that whenever Members consider a matter relating to the planning function all decisions are taken on proper planning grounds and are taken in a consistent and open manner and that Members making such decisions are perceived as accountable for those decisions. The Planning Protocol is also designed to assist Members in dealing with approaches from applicants/developers and third parties and is intended to ensure that the decision-making process is sound.

Application

- 1.6 The following guidance should be followed by all Members not only in respect of the formulation and adoption of development plan policies but also in respect of development control functions (planning applications of all types including listed building consent and certificates of lawful use and the determination of all enforcement matters). It applies to meetings of the Authority when dealing with such matters and it applies to the conduct of Members even before a formal application or proposal is submitted.
- 1.7 Failure to comply with this Planning Protocol may result, or play a significant part, in
- the investigation of complaints of maladministration or allegations of failure to observe the Code of Conduct for Members by the Local Government Ombudsman
 - complaints to the Authority's Standards Committee
 - judicial review proceedings in the High Court
 - appeals to the Assembly (eg in respect of awards of costs)
 - complaints about the conduct of officers.

An alleged failure by a Member to comply with this Protocol may be referred to the Authority's Standards Committee. Other alleged failures shall be dealt with through the Authority's complaints procedure.

- 1.8 This Protocol applies to both Members and officers who become involved in operating the planning system – it is not therefore restricted to professional town planners and Development Control Committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

Code of Conduct

- 1.9 The Authority's Code of Conduct for Members which includes mandatory requirements with regard to personal interests must be complied with throughout the decision-making process. Members should also have regard to the Assembly's Guidance on the Ethical Framework (which at this time is still in draft form). Decisions should not be influenced by personal interests of Members (including the interests of his/her relative(s) or friend(s)) or because of undue pressure exerted by applicants, agents or third parties. It is necessary to avoid even giving the impression that decisions may have been so influenced.
- 1.10 The responsibility for disclosing a personal interest rests with individual members. A similar responsibility applies to officers. In the event of uncertainty, Members should seek advice on the application of the Code from the Monitoring Officer or Deputy Monitoring Officer. Early notification of disclosure interests is particularly important to allow proper consideration of the issues. This Planning Protocol outlines further rules applicable to the planning process in the Authority.

2. LOBBYING

- 2.1 This section is intended to ensure –
- that high standards are maintained when planning decisions are taken;
 - in particular that the integrity of the decision-making process is not impaired, either in reality or in perception, through the lobbying of those Members who will make decisions;
 - that the fact that approaches have been made by lobbyists are recorded, and that any representations made to Members form part of the public information leading to any decision.

(And in this protocol “lobbyist”, “interested person/party” etc includes the applicant, supporters, objectors, agents etc).

2.2 To avoid compromising their position in making a decision before they have received all the relevant information, Members must –

- Take care in any contact with interested parties to ensure that they are not unduly influenced in any way by one party or another and to avoid making it known in advance whether they support or oppose the proposal. If possible any meetings with Members should be arranged by and attended by an appropriate officer and will include the Chair of the Development Control Committee or his/her representative;
- Not advise interested parties or their agents on the likely acceptability of planning proposals;
- Restrict their views to giving procedural advice and listening to concerns and views;
- Direct lobbyists to planning officers, who will include reference to their opinions, where relevant, in their report;
- Not organise support for or against a planning proposal;
- Not lobby other Members;
- Not pressurise officers to make a particular recommendation in their report;
- Not circulate unofficial papers to other Members or at Committee meetings;
- Not attend the application site with interested parties or their representatives.

2.3 Where a Member has been lobbied, he/she should report to the relevant Committee that he/she has been lobbied and by whom. However, members must act in the public interest and not at the behest of any individual or interest. If the Member feels that he/she no longer retains an open mind on the matter, but that his/her impartiality has been compromised, he/she should act as if they had a personal interest and withdraw from the meeting. If a Member feels that they are subject to excessive lobbying, they should contact the Monitoring Officer for advice.

- 2.4 If a Member involved in determining planning matters has responded to lobbying by openly advocating a particular course of action prior to a Committee meeting, and there may be particular local circumstances where this is considered appropriate, that Member should act as if they had a personal interest and withdraw from the meeting.
- 2.5 Members involved in determining planning matters who find themselves in a lobbying situation may wish to take steps to prevent this happening, and explain that whilst they can listen to what is said, they are constrained from expressing a firm point of view or an intention to vote one way or another.
- 2.6 Where Members involved in the determination of planning matters are in attendance at public meetings they may listen to the debate on current planning matters and may provide advice about procedures involved in determining an application, considering unauthorised development etc. Where Members find it appropriate to express a view on a matter in such meetings so as to indicate that they have made up their mind on the proposal etc, they should then act as if they had a personal interest and withdraw from the Authority meeting when the matter is discussed.
- 2.7 Where a Member receives written representations directly in relation to a planning application, local plan proposal, enforcement issue etc, the Member shall as soon as practical pass the correspondence to the Development Control Manager in order that those representations may be taken into account in any report to the Development Control Committee. This does not apply to circular letters which indicate that copies have also been sent to the Authority itself.

3. MEMBERSHIP OF ANOTHER LOCAL AUTHORITY

- 3.1 A Member of a community or other council can discuss a planning matter at that level but has to choose whether to publicly express a view at an early stage of the process (for or against) or reserve judgement until all views have been considered at the Committee meeting and only then to express a view.

3.2 If at the other council's meeting, or indeed elsewhere, the Member had given the impression that he/she had made up his/her mind during the debate or in the voting on a particular planning matter before hearing all the information and advice presented later at the Authority's meeting, he/she should then act as if they had a personal interest and withdraw from the Authority meeting.

3.3 To avoid a later claim to the contrary, Members are advised not to publicly express a view at a community or other council meeting, not to vote on that planning matter at that meeting and to have their abstention recorded in the minutes.

4. FORMAL SITE VISITS

4.1 The Development Control Committee may only decide that a site visit should be made if it is satisfied that:

- the application requires the judgement of Members based on site characteristics or visual interpretation which cannot readily be seen from photographs, slides etc – eg impact on amenity; effect on highway safety and traffic flows; effect on the character of the area; effect on the character or setting of a listed building or conservation area; effect on townscape or landscape; or
- the proposal relates to a new or novel form of development and which may require a visit to an existing establishment as well as to the proposal site in order to appreciate the potential planning implications; or
- development has been commenced or completed, which if refused planning permission would normally require enforcement action and a site inspection would assist in determining the expediency of such action.

4.2 If the application requires the Committee to come to conclusions on matters for which a site inspection would have no relevance (eg the functional and financial tests associated with a new dwelling in the countryside), those matters shall be determined before consideration is given to whether or not a site visit should be made.

4.3 The minutes shall record the reason for the proposed site visit.

4.4 The Development Control Manager shall organise such site visits. The letter reminding Members of the date and location of the formal site visit shall include the reason for the site visit.

4.5 The applicant and any objectors/supporters will be informed –

- that a site visit will take place
- that the purpose of the site visit is that Members should have the fullest appreciation of the nature of the site and the impact of the proposed development; and
- that the Members will not hear any representations from the applicant or any objectors, neither of whom shall be present.

4.6 Where appropriate, officers from the highway authority, sewerage undertaker and Environment Agency shall be invited to the site visit.

4.7 At site visits –

- The Chairman of the Committee will manage the site visit;
- Members of the Development Control Committee shall keep together as a group and shall not engage individually in discussion with anyone who is not present as part of the site visit;
- Officers will point out the relevant aspects of the site and give the Members an opportunity to ask questions;
- Members will formulate their views on those aspects which determined the need for a site visit. The views will not be discussed in the presence of the applicant or any objectors;
- The views of the Members will be recorded and included in the officer report to the Development Control Committee.

5. MEETINGS OF THE DEVELOPMENT CONTROL COMMITTEE

5.1 Section 54A of the Town and Country Planning Act 1990 states –

“ Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”

Thus, where the development plan is relevant, the Authority must determine applications in accordance with the plan unless material considerations indicate otherwise. This statutory requirement is a fundamental principle for the Authority's approach to decision-making.

5.2 Reports to the Development Control Committee should be prepared as follows -

- Reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted, as recommended by the Local Government Ombudsman.
- Relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations.
- Reports should contain technical appraisals which clearly justify a recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.
- Reports shall be in writing and (where feasible) shall contain up-to-date OS plans and (where appropriate) reduced copies of application plans. Reports shall have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur.

5.3 A senior legal officer should always attend the meeting to ensure that procedures have been properly followed.

5.4 The Chairman and Vice-Chairman should attend a briefing with officers prior to a Committee meeting, to assist the effective conduct of the Committee meeting.

Representations

5.5 Members also have a duty to take into account any representations made to the Authority as a result of consultation with interested bodies or as a result of public notice or neighbour notification. In doing so it is necessary to decide which representations are material to the decision to be made, and, if so, what weight to attach to them. This conclusion should not be reached until all information and argument has been presented and considered.

- 5.6 Care should be taken by Members before introducing new information into the debate at the Committee as that might lead to consideration of a matter being deferred or the committee taking a decision on the basis of information which subsequently proves to be incorrect. Where a Member receives relevant information in respect of an application which is not contained in the Committee report, wherever possible the Member should advise the Development Control Manager directly so that the information can be confirmed before the meeting.
- 5.7 In the event of a material revision to any planning application being received after preparation of the Committee report the Committee shall consider whether (a) to defer consideration of the application or (b) delegate the decision following re-consultation. In other cases, where the Development Control Manager considers that it is appropriate to do so, officers may present new information orally. However, where the information is substantial, it will usually be necessary to defer consideration by the Committee for a written appraisal to be prepared.
- 5.8 A Member shall decline to vote in relation to any planning application unless he or she has been present in the meeting of the Development Control Committee throughout the consideration of that particular application.

6. DECISIONS CONTRARY TO OFFICER RECOMMENDATIONS AND/OR THE DEVELOPMENT PLAN

- 6.1 The Courts have expressed the view that where a planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker.
- 6.2 Whenever the Committee is minded to determine a planning application contrary to the officer recommendation, the Committee must define the reasons for rejecting the officers' recommendation. The reasons must be recorded in the minutes and the

application will be deferred to the next meeting of the Committee in accordance with the following provisions of this Protocol.

- 6.3 At the subsequent meeting the Development Control Manager shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee for not accepting the earlier recommendation. The report shall –
- (a) (where Members are minded to grant permission) contain draft conditions to be attached to the grant of planning permission and, where appropriate, a recommendation concerning a planning obligation; or
 - (b) (where Members are minded to refuse permission) set out formal reasons for refusal reflecting the previous views of the Committee; advise upon the evidence that would be available to substantiate those reasons; and include any other reasons for refusal which the officers consider could be substantiated on appeal.

If the Development Control Committee is still of the same view, then it shall again consider its reasons for not accepting the officers' advice. Those reasons shall then be formally recorded in the minutes of that subsequent meeting.

- 6.4 Applications which are not in accordance with the development plan must be identified as soon as possible. They must then be advertised as such, as required by Article 8 of the Town and Country Planning (General Development Procedure) Order 1995. Secondly, if it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan clearly demonstrated. The application may then have to be referred to the National Assembly for Wales depending upon the type and scale of the development proposed. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

7. DEVELOPMENT PROPOSALS SUBMITTED BY MEMBERS AND OFFICERS

- 7.1 Proposals to their own authority by serving and former members and officers and their close friends can easily give rise to suspicions of impropriety. So indeed can

proposals for an authority's own development. Proposals can take the form of either planning applications or development plan proposals. In all correspondence and meetings etc, such Members and Officers should identify their status.

- 7.2 Serving members who act as agents for people pursuing a planning matter within their authority must 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.
- 7.3 Such proposals should be reported to the planning committee as main items and not dealt with by officers under delegated powers. The same applies to applications etc made by former Members and officers. Proposals for the Authority's own development will be treated in exactly the same way as those of private developers.
- 7.4 Where there is a proposal from a Member or officer (or from a member of their family or from a close friend), the Member or officer must –
- (a) inform the Development Control Manager when the application is made or as soon as it comes to the attention of the Member or officer;
 - (b) take no part in the decision-making process; and
 - (c) comply with other relevant provisions of this Protocol.
- 7.5 Where a Member has made an application (or a member of whose family or a close friend of whom has made an application), the Member shall not approach officers directly in relation to the application other than in writing.
- 7.6 Officers within the Authority should not submit applications to the Authority on behalf of third parties except as part of their duties as Authority employees.

8. TRAINING AND MONITORING

- 8.1 Members should attend an induction and regular training sessions to receive guidance in relation to planning regulations and procedures and on disclosure of personal interests.

- 8.2 The report of the Audit Commission Building in Quality recommends that members should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policies.
- 8.3 The Development Control Manager shall arrange such reviews.
- 8.4 Reviews are best undertaken at least annually. They will include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes will be prepared on each case. The Development Control Committee will formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

9. COMPLAINTS / RECORD KEEPING

- 9.1 Whatever procedures a planning authority operates, it is likely that complaints will be made. However, following this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 9.2 A logical consequence of adopting a local protocol of good planning practice is that the Authority should also have in place a robust complaints system. The Authority has a procedure for dealing with formal complaints. It should be remembered that complainants alleging a breach of the statutory local code of conduct are able to direct their allegations in writing direct to the Local Government Ombudsman.
- 9.3 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Authority 's case. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and

why and how it had been reached. Particular care needs to be taken with applications determined under officers' delegated powers, where there is no report to a Committee. Such decisions should be as well documented and recorded as those taken by Members. These principles apply equally to enforcement and development plan matters.
