

30. Local Planning Protocol and Code of Conduct



London Borough of Bromley Local Planning Protocol and Code of Conduct

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1 Introduction

1.1 Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.

1.2 The planning system works best when officers and councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate. Planning decisions are based on balancing competing

interests and making an informed judgement against a local, regional and national policy framework.

1.3 The seven principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019. These principles are:

- **Selflessness:** holders of public office should act solely in terms of the public interest.
- **Integrity:** holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity:** holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** holders of public office should be truthful.
- **Leadership:** holders of public office should exhibit these principles in

their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

1.4 This protocol and code of conduct applies to all planning committee meetings, currently known as Development Control Committee and Plans Sub Committees, and to all Officers and Councillors attending committee meetings. Reference to planning committee is to either of these meetings. Planning committee is a formal meeting of elected Members who make statutory decisions as the Local Planning Authority.

1.5 The purpose of this document is to help all those involved with planning committees, and in particular those making decisions, be consistent in their behaviour and approach and to ensure that the meetings are conducted fairly, transparently and in accordance with the relevant legislation. It has been produced in accordance with the Planning Advisory Service publication 'Probity in Planning' – December 2019. [This document will be reviewed annually.](#)

1.6 Where permission is refused, applicants can appeal against planning decisions to the independent Planning Inspectorate, with a possibility of costs being awarded against the Local Planning Authority if unreasonable behaviour by the Authority can be demonstrated. Appeals can also be submitted against the imposition of planning conditions.

1.7 Planning decisions can be the subject of judicial review, and aggrieved parties can go to the Local Government and Social Care Ombudsman with complaints about maladministration. Adherence to this protocol will minimise the risk of appeals being lost, successful costs claims, lost court cases and upheld complaints.

1A Attendance at Planning Committee Meetings

1A.1 Officers and Councillors attending any planning committee meetings to address or advise the committee are required to have read, understood and abide by this Protocol prior to attending a meeting.

1A.2 Substitute Members at planning committee meetings should be impartial and no more than two Members sitting on a committee should be representing any particular ward at any time. This does not include visiting Members who cannot vote.

1A.3 All Members who sit on a planning committee are required to have basic training before they sit on that committee, which is provided annually on the following topics and will be monitored:

- Introduction to Planning
- The Development Plan and Decision Making
- Predetermination and Predisposition
- Probity and Disclosure of Interests
- How Committees Work
- The Local Planning Protocol

1A.4 When more than 50% of the Members of a specific Plans Sub Committee declare at the start of the meeting (or beforehand) that they know a planning applicant, the matter would automatically be referred to the Development Control Committee. The Chairman of each committee is responsible for identifying such cases.

2. Referral of Applications to Committee

2.1 Applications can be included on a committee agenda for any of the following reasons:

1. They are subject to a written 'call in' by a Councillor

2. They fall outside of the powers delegated to Planning Officers
3. Planning Officers decide to refer the application to committee

2.2 This is a summary and reference should be made to the Scheme of Delegation ([London Borough of Bromley Constitution Chapter 6 - Scheme of Delegation](#)) which provides the constitutional framework for powers of delegation to Officers and sets out the arrangements for 'call in'.

2.3 Planning applications, tree matters and contravention reports can be considered by either Plans Sub Committee or Development Control Committee. Matters of policy and strategic reports are only considered by Development Control Committee.

2.4 If an application is to be considered at planning committee (see 2.1 above), the following procedures apply to determining which committee to report it to:

- 'Non-major' applications are considered by Plans Sub Committee unless the Assistant Director (Planning) determines that the application is of strategic importance and refers it to Development Control Committee.
- 'Major' applications - Officers recommend a decision route and this is agreed by the Chairman and/or the Vice Chairman of Development Control Committee within 3 working days of receiving the Officer recommended decision route in writing. This will normally be via a recommendation list provided at least monthly.

2.5 Applications are placed onto committee agendas by Officers using a 'cab rank' principle whereby they are reported to the next available committee once the case officer is content that the application is ready to be reported. Members should not request to Officers that applications be considered by a particular committee or on a particular date.

3. Agenda and Reports

3.1 The planning committee agenda will include planning applications in numerical order based on the application reference number.

3.2 Application reports are normally presented in a standard format provided by the Assistant Director (Planning). Reports will identify and analyse the material considerations, of which the committee will need to take account when considering the application on its planning merits. The presentation of reports for matters other than applications may vary according to their content but will present a clear recommendation where appropriate.

3.3 Planning committee agendas must be published on the Council's website a minimum of 5 working days prior to the committee meeting.

3.4 Planning application reports will always include an officer recommendation for either approval or refusal. Non application reports will include a recommendation where appropriate.

4. Site Visits

4.1 Planning Officers will normally visit each application site for cases being considered by committee and these visits are used to inform the committee report and recommendation. Photographs from these visits are often used within reports to illustrate particular important points.

4.2 For formally arranged Councillor site visits, the Chairman of the relevant committee in consultation with the Assistant Director (Planning) or Head of Development Management will decide whether a site visit for committee members is necessary in advance of any particular application being determined at committee. Such visits will not be publicised.

4.3 A site visit for committee members is only likely to be necessary if either:

- I. the impact of the proposed development is particularly difficult to visualise from the plans and any supporting material, including photographs taken by officers; or
- II. the proposal is particularly contentious.

[A formal site visit will not be necessary where a site is predominantly visible from a publicly accessible area and in such circumstances it is preferable for discreet individual site visits to be carried out if Members feel they wish to see the site first hand so as to avoid possibilities of lobbying by any party.](#)

4.4 Formally arranged site visits are for Members to observeing the site and gaining a better understanding of the issues. They should not be used as a lobbying opportunity by applicants or their agents, local residents, objectors or supporters or for debating any aspect of the proposal or for making any decision. Councillors will usually be accompanied by a Planning Officer.

4.5 It is often useful for committee members to visit a site to familiarise themselves with it prior to consideration of an application at committee. If Members do encounter an applicant or neighbour during any informal visit, they should not express an opinion, either for or against the proposal.

4.6 Doing so could be misinterpreted as lobbying and may create a suspicion of bias. If such contact is made this should be declared in Committee, but this should not prevent that Member from taking part in the consideration of that application provided they have acted in accordance with the advice in this Protocol.

5. Late Representations

5.1 Planning applications involve public consultation which has to comply with a legal statutory minimum requirement. In many cases the Council consults over and above the statutory minimum and our approach to this is set out in Section 4 of our

published Statement of Community Involvement - [Bromley Council Statement Of Community Involvement](#)

5.2 Public consultation on planning applications includes a formal period for representations to be submitted, and representations are accepted only on a discretionary basis after the expiry of the formal consultation period. Representations received after formal consultation has closed are not guaranteed to be considered in the determination of an application.

5.3 To ensure that all representations can be assessed and presented to planning committee as appropriate, it is necessary to have a cut off time for receiving representations on applications to be considered at committee and this is 12 noon on the day of the meeting. The Assistant Director (Planning) has the final decision on whether to accept late representations.

5.4 As committee reports are prepared and published some time in advance of committee meetings, any representations (including those from consultees) received after publication of the report will be uploaded to our website and may be verbally summarised by the Officer attending the meeting.

5.5 If late representations affect the conclusions of the report or recommendation this will be reported verbally to the committee.

5.6 Documents must not be distributed to committee members at the committee meeting (including by public speakers) to ensure that the material considered in the determination of the application is available to all.

6. Public and Visiting Councillor Speaking Procedure

6.1 Members of the public making written comments on planning applications which are to be considered by a planning committee have the opportunity to verbally

address Councillors at committee if they wish. Anyone wishing to speak must have already written in expressing their views on the application. Speakers are not normally permitted on items other than planning applications.

6.2 Members of the public wishing to speak at planning committee must give notice to the Democratic Services Team of their intention to speak no later than 10:00 am on the working day before the meeting. Requests to speak will only be registered once the relevant agenda has been published.

6.3 Should speakers wish to table any correspondence or photographs to supplement their speech to the committee, all documents must be submitted to the Democratic Services Team by 5.00 p.m. on the working day before the meeting. A permanent copy of any item must be provided and it is not acceptable to refer to online maps, photographs on phones/ipads or similar. The Chairman`s agreement must be sought at the meeting for any items to be considered.

6.4 Order of public speakers: if the recommendation is 'permission' then it will normally be the opponent first, supporter second. If the recommendation is 'refusal', the reverse order will apply.

6.5 Normally one person is permitted to speak for an application and one person permitted to speak against it. If there are more than two requests to speak for or against, people with similar views should get together and agree spokespersons. If there is no agreement, the first person to notify Democratic Services of their intention to speak will be called. Among supporters, the applicant (or if the applicant wishes, the agent) takes precedence, and if the applicant or agent do not wish to speak, the first supporters will be called.

6.6 Residents' Associations or other organisations wishing to make use of these arrangements must appoint a single spokesperson to represent their views.

6.7 Speakers are reminded that only material planning considerations

are relevant to the determination of planning applications.

6.8 Each speaker will normally be given up to three minutes and this will be indicated by the warning light system in front of the speaker: - an amber light will show the passing of two-and-a-half minutes and a red light will show the completion of the three minute period. At the red light the Chairman will normally ask the speaker to cease their presentation.

6.9 Members of the Committee (but not visiting Ward Members) may ask speakers to clarify points raised. Otherwise, once members of the public have spoken, no further intervention will be permitted.

6.10 Visiting Ward Councillors should notify the Democratic Services Team of their intention to speak at committee prior to 5:00pm the day before the meeting.

Visiting Councillors ~~do not have a formal time constraint but should aim to~~

required to keep their presentation to within 3 minutes and will be reminded when

this time is expiring by the Chairman. Any representations must be limited to

material planning considerations. Visiting Members must not sit with members of

the committee or sub-committee after they have finished addressing the committee

and must not take part in the subsequent debate so it is clear that they are not part

of the formal committee membership.

~~6.10~~6.11 If a Ward Councillor is unable to attend the meeting but wishes to make representations to the committee, a statement (maximum 3 minutes long) can be read out by an attending committee member or officer.

7. Order of Proceedings

7.1 Whilst the order of consideration of items at planning committee is ultimately a matter for the Chairman, planning applications will normally be heard first, followed by other items.

7.2 The Chairman will normally vary the order of the agenda taking items

with visiting Councillors and public speakers first. Speakers and visiting Councillors should leave the table once they have spoken, prior to the debate on the item commencing.

7.3 Matters will proceed for each item as follows, skipping items where there is nothing to report or no speaker present:

1. Update from Planning Officer and presentation for applications
2. Public speaker(s) (see 6.7 above)
3. Visiting Ward Councillor (see 6.13 above)
4. Committee debate
5. Chairman summarises motions put and seconded
6. Chairman to clarify reasons for refusal or permission if different to that recommended or if additional reasons / conditions are to be added
7. Planning Officer opportunity to advise committee prior to motion being considered
8. Vote taken
9. Chairman to summarise and confirm the decision

Planning, legal and other professional officers have a right to be heard and to give advice within their area of professional expertise at any point in the consideration of an application.

7.4 The Chairman should be careful to ensure that additional conditions or reasons for refusal are clearly identified prior to going to the vote and not afterwards to ensure that the committee is clear what it is voting on. The Chairman can take advice from legal, planning or other professional officers present.

7.5 Should there be differing views about the content of reasons for refusal or conditions, the Chairman may take a separate vote following the main vote to

clarify the outcome.

7.6 Committee members are given the opportunity to record their vote against whatever motion is put if they wish.

7.7 It is important for the quality of decision making that the Planning Officer is provided with an opportunity to update Members and make any final comment immediately prior to the vote being taken to help ensure that the committee is fully aware of any further advice pursuant to the debate / motion.

7.8 Meetings will normally finish by 10:00pm.

8. Decision Making and Voting

8.1 Councillors who have called in an application to committee should not move or second a motion on that application. The Chairman should take the motion that is proposed and seconded first and only if that motion fails move to the next motion that is proposed and seconded.

8.2 Should votes for or against a recommendation both fail it is still open to the committee to consider whether they might defer the application for possible changes to make it acceptable to the majority of the committee. The Chairman can use her or his casting vote to decide if voting is equal for and against a motion.

8.3 Councillors should state motions they put clearly and include any specific changes they propose to the officer recommendation so that the committee understand the extent of the motion being proposed (see also 7.5 above).

8.4 When voting, committee members should raise their hands clearly to ensure an accurate count for the vote.

Motions and Votes Against Officer Recommendation:

8.5 Where a motion goes against Officer recommendation the procedure

should be:

1. Chairman summarises motions put and seconded
2. Chairman clarifies reasons for refusal or permission if different to that recommended or if additional reasons / conditions are to be added
3. Chairman gives the Planning Officer [and / or the legal representative](#) the opportunity to advise committee prior to the motion being considered.

The advice from the Planning Officer will be based upon the material considerations that have been discussed by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge. The solicitor advising the Committee will be called upon as necessary to give advice on legal matters.

[8.6](#) If the Planning Officer considers that he/she is unable to give that advice immediately, or if the Planning Officer considers that a final decision to refuse could make the Council vulnerable at appeal and awards of costs, Officers should be able to seek a deferral of the item for one cycle of the committee so that a confidential report which sets out the risks can be prepared and avoids Officers having to advise on these issues in public (the final decision on the application should however always be in public), ~~or defer the application to the next Development Control Committee.~~

~~8.6~~[8.7](#) Draft minutes will normally be produced by officers within 5 working days of the committee meeting unless there are exceptional circumstances which delay their release.

9. Councillor and Officer Roles

9.1 The PAS publication 'Probity in Planning' 2019 states: "*Councillors and*

officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service..”

9.2 The 7 Standards of Public Life identified in the Localism Act 2011 are:

- Selflessness – public interest
- Integrity – not open to inappropriate influence/private gain
- Honesty – truthful; declaration of interests and gifts
- Objectivity – use best evidence; impartial; non-discriminatory
- Accountability – open to scrutiny
- Openness – open and transparent decisions in public
- Leadership – uphold and exhibit standards and behaviours

9.3 The Planning Advisory Service Report for Bromley (May 2019) states:

“The role of Councillors on the Committees presents a challenge to the individual. It is often considered to be a quasi-judicial role, but has been described as

“A formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly.”

(Local Government Association/Planning Advisory Service: Probity in Planning for Councillors and Officers 2013.)

In this role Councillors are expressly being asked to place to one side any party political interests, and their role as the representatives of a particular ward, and assess, debate, and then determine often controversial planning proposals in the wider public interest of the whole Council area, and in line with national and local planning policy. They must do so in a way which demonstrates they have

understood their role and have approached the decision point open to considering and weighing the merits of all the material issues.”

Members must never be involved in decision making for applications submitted by themselves, a family member or a close personal associate, and must comply with the Members Code of Conduct at all times when such applications are submitted.

If on consideration of a planning application a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that a Member was biased the Member must recuse themselves from consideration of that application.

9.4 The role of the committee Chairman is to lead and manage the committee and in particular:

- determine the order in which questions may be addressed from the committee members following the officers presentation;
- ensuring that the public speaking procedure is followed;
- managing the committee debate about applications including the order in which Councillors who wish to address the committee may speak;
- determining when the debate has come to a close and votes should be cast in the order in which the motions were first completed (i.e. where the motion has been moved and seconded by Members of the Committee).
- ensuring that debate and decisions made are suitably focused on relevant planning considerations.

9.5 Councillors sitting on the planning committee should:

- make planning decisions on applications presented to the Committee openly, impartially, with sound judgement and for sound planning reasons.
- consider only material planning considerations in determining applications
- exercise their responsibilities with regard to the interests of the London

Borough of Bromley as a whole rather than with regard to their particular Ward's interest and issues;

- Come to meetings with an open mind.
- Not allow anyone (except officers, other committee Members and public speakers when they are addressing the committee) to communicate with them during the meeting (orally or in writing) as this may give the appearance of bias. For the same reason, it is best to avoid such contact immediately before the meeting starts.
- Consider the advice that planning, legal or other officers give the committee in respect of the recommendation or any proposed amendment to it.
- Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires the Local Planning Authority to make decisions in accordance with the development plan unless there are good planning reasons to come to a different decision.
- Come to their decision only after due consideration of all of the information available to them, including the local information that Members are uniquely placed to access, but always remembering to take decisions on planning grounds alone. If Members feel there is insufficient time to digest new information or that there is insufficient information before them, then they should seek an adjournment to address these concerns.
- Not vote on a proposal unless they have been present to hear the entire debate, including the officer update and any public speaking.
- Make sure that if they are proposing, seconding or supporting a decision contrary to the officer's recommendation or the development plan, that they clearly identify and understand the planning reasons leading to this conclusion and that they take into account any advice planning, legal or other officers give them. Their reasons must be given prior to the vote and be recorded. Be aware that they may have to justify the resulting decision by

giving evidence in the event of challenge.

- Members ~~are required to~~should avoid requests for officers to speed up or delay the determination or assessment of particular applications or for items to be reported to particular meetings for any reason including their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties.
- seek to attend relevant training and briefing sessions organised from time to time for them.

9.6 The role of Planning Officers at committee is:

- to use professional judgement when recommending decisions on applications and other planning matters.
- to provide professional advice to the committee on planning applications and other matters at any point in the meeting.