



**Dartmoor National Park Authority**

# **Development Management**

## **Good Practice Guide**

**Adopted on: 4 November 2011**

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# 1 Introduction

- 1.1 This Good Practice Guide has been adopted by the Dartmoor National Park Authority to set out written guidance for the performance of its Development Management function. It is intended to place this document in the public domain on the Authority's web site. The Guide also sets out the role of Officers and the way in which Officers will assist Members in reaching decisions, as well as how they will deal with Delegated decisions. The Guide has the following objectives:
- To assist 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 set out internal policies and procedures for 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 This Guide aims to reflect the Local Government Association's publication "*Probity in Planning – The Role of Members and Officers*" (2009). The aim is to ensure that there are no grounds for suggesting that a decision has been affected by bias, partiality or unreasonableness.
- 1.3 The Guide is separate from, and in addition to, the Authority's adopted Members' Code of Conduct, although some provisions of the Guide address issues which are also dealt with by the Code of Conduct.
- 1.4 One of the key purposes of the planning system is to regulate the development and use of land. Decisions should be made in the wider public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons.
- 1.5 The advice in this Guide applies to Members at all times when they are involved in the planning process. This includes meetings of the Development Management Committee, meetings of the Authority when exercising other planning functions and less formal occasions, such as site meetings, meetings with Officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as to planning applications.
- 1.6 If you have any doubts about the application of this Guide to your own circumstances, please seek advice from the Monitoring Officer or Deputy Monitoring Officer, at an early stage and preferably well before any meeting takes place.

## 2 The Members' Code of Conduct

- 2.1 The Members' Code of Conduct sets out general responsibilities and obligations for Members, addresses the issue of personal and prejudicial interests, registration and declaration of Members interests and gifts and hospitality.
- 2.2 Members will be aware that the Localism Bill proposes significant changes to the Standards regime and in particular the abolition of the current Members' Code of Conduct. However, until any such legislation comes into effect, the Code of Conduct remains in binding force and this Guide is intended to supplement the Code of Conduct in the context of planning control.
- 2.3 Members must always declare personal and prejudicial interests in accordance with the Members' Code of Conduct.
- **Do** disclose the existence and nature of your interest at any relevant meeting preferably at the start of the meeting, including informal meetings or discussions with Officers and other Members.
  - You **must** disclose your interest no later than the commencement of discussion on that particular matter, or as soon as your interest becomes apparent.
- 2.4 Where your interest is personal and prejudicial:-
- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter;
  - **Don't** use your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so. (You should never 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 Member).
- 2.5 A Member who declares a prejudicial interest in a matter has the following rights:
- To address the Committee for up to three minutes under the scheme for public speaking
  - To appoint an agent/planning consultant to address the Committee on their behalf
  - To ask another Member to represent their views

## 3 Decisions & Pre-Determination

- 3.1 To preserve the integrity of Committee decisions, it is vital that Members do not make up their minds before they have all relevant material and arguments before them at the meeting. Members are entitled to feel pre-disposed towards a

particular decision, but must still be able to consider and weigh relevant factors before reaching the final decision.

- 3.2 Pre-determination arises when a Member's mind is closed to the consideration and weighing of the relevant factors.
- 3.3 As a Member you should not make up your mind, **or appear to have made up your mind**, on how you will vote on any planning matter until you have heard the Officer's presentation and any public speakers at the Committee meeting and listened to the debate. It is however acceptable to state that "on the current information I am minded to support / oppose the proposal, but I cannot decide until I have heard the full details at Committee"
- 3.4 If you have made up your mind prior to the meeting, then you must not participate in the determination of the matter by the Authority. You are **disqualified by reason of pre-determination**. You must not speak or vote, but you do not have to withdraw from the meeting (unless you have declared a prejudicial interest). If you stay in the meeting, you should explain to the meeting that you do not intend to speak or vote, and ask for this to be recorded in the minutes.
- 3.5 This is particularly important if you are contacted by an external interest or lobby group or have been actively involved with any such group, as pre-determination by just one Member risks making the whole decision vulnerable to legal challenge.

## **4 Membership of another Local Authority**

- 4.1 If you are also a member of a County, District or Town/Parish council, you are not automatically disqualified from participating in the determination of business by the Committee, even if you have previously been involved in considering the same business at a meeting of the other council.
- 4.2 You must be careful, however and apply common sense, particularly in controversial applications. If a Member gives the impression that he/she has made up his/her mind when speaking at a meeting of another council (or elsewhere) they may find themselves disqualified from participating at the Committee, by reason of predetermination.

## **5 Contact and Lobbying**

- 5.1 This section of the Good Practice Guide is intended to ensure:
  - (a) that high standards are maintained when planning decisions are taken;
  - (b) in particular that the integrity of the decision-making process is not impaired, either in reality or in perception, through lobbying;
  - (c) 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.

*(\*“lobbyist”, “interested person/party” etc includes the applicant, supporters, objectors, agents and family members etc).*

- 5.2 To avoid compromising their position in making a decision before they have received all the relevant information, Members should:
- take care in any contact with interested parties to ensure that they are not unduly influenced in any way by one party or another
  - avoid making it known in advance whether they will support or oppose the proposal

**NB. It is acceptable to state that “on the current information I am minded to support / oppose the proposal, but I cannot decide until I have heard the full details at Committee”**

- not comment 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, or act as a spokesperson for any such group;
  - not lobby other Members or circulate documents to other Members;
  - not pressurise officers or consultees to make a particular recommendation;
- 5.3 Where a Member has been lobbied, he/she should report this fact to the Committee as a personal interest. If a Member feels that his/her impartiality has been compromised by the extent of lobbying, he/she should act as if there is a prejudicial interest and withdraw from the meeting.
- 5.4 Members can properly attend public meetings and listen to the debate on planning issues and may provide advice about procedures involved in determining an application etc. However, if a Member expresses a view on a matter in such meetings so as to indicate that they have made up their mind on a specific proposal or issue, they are likely to be disqualified by pre-determination from participation at the Committee when that matter is discussed.

**NB. A Member faced with lobbying can always explain that they can listen to what is said, but they are not able to express a firm point of view or an intention to vote one way or another, and that they are bound to report the fact of the lobbying to the Committee meeting.**

## **6 Site Visits**

- 6.1 Site visits can play an important role in ensuring that Members make decisions on a sound understanding of the relevant issues. However care must be taken to

ensure that site visits are not misused as a lobbying device to help ensure a particular outcome in respect of controversial applications or to defer consideration of an application to a subsequent meeting. It is also important that there is a clear understanding by members of the public as to why certain applications require a site visit and others do not.

- 6.2 Site visits should only be made by Members in strict accordance with the Site Visit Protocol at Appendix 1. A site visit should only be convened if:
- following the officers presentation of the report and all public speaking in relation to the proposal, it is considered 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.
- 6.3 The minutes shall record the reason for the proposed site visit.
- 6.4 Members should not enter a site which is subject to a planning application even in response to an invitation, except as part of an official site visit, as this may give the impression of bias unless:
- You feel it is essential for you to visit the site other than through attending the official site visit. It would be helpful following the site visit for you to notify the case officer and Director of Planning by email.
  - You have the permission of the owner of the land.
- 6.5 Members may of course view a site from a public highway or access land at any time, but should guard against becoming drawn into discussions of the merits of any proposal with the applicant/agent or any other interested party.

## **7 Decision making**

- 7.1 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.

- 7.2 The Director of Planning or his/her nominee shall be present at every meeting of the Development Management Committee, to provide advice and assistance to Members as required.
- 7.3 The Head of Legal and Democratic Services or his/her nominee will be available – either present at the meeting or ‘on call’ at the same location – to advise or assist with legal, procedural or governance issues, as required.
- 7.4. Decisions shall be made by simple majority vote in accordance with the Authority’s adopted Standing Orders and in particular the guidance on voting procedures.
- 7.5 A Member shall refrain from voting in relation to any matter unless he/she has been present at the meeting throughout the full consideration of that item of business. Otherwise a Member when absent for part of the meeting may miss a crucial piece of information which might have a bearing on how they vote.
- 7.6 Upon calling for a vote, the Chairman shall if requested by the Director of Planning (or his nominee) allow him/her the opportunity to address the Committee before that vote is taken:
- to clarify suggested conditions in the event of an approval and to suggest further conditions
  - to clarify the proposed reasons for refusal, and to suggest further reasons
  - to summarise his/her advice on the application
- 7.7 The precise wording in any Decision Notice or minute of any condition, reason for grant or refusal, consent, restriction, limitation or other matter relevant to a decision shall be finalised by the Director of Planning and shall be based on the wishes of the Committee.
- 7.8 If a Member wishes to ask a question at Committee regarding any matter listed on the Agenda for information, noting, decisions taken under delegated powers, consultation with other bodies or otherwise not for debate, the Member will notify the Director of Planning in writing not less than 48 hours prior to the meeting, so that the question can be considered and a full response given.

## **8. The Role of Officers**

- 8.1 The following matters are of particular note:
- (a) Officers are advisers; the final decision rests with the Committee
  - (b) All officer reports should be full and accurate and contain clear advice on the Development plan and all material planning considerations. The report should also set out the planning history of the site, report the views of those consulted and others who have made comments.

- (c) Every report should contain a recommendation. Reasons are necessary for both approval and refusal of an application.
- (d) Where an application is not in accordance with the development plan but is recommended for approval, officers must clearly identify the material planning considerations which led to this conclusion.
- (e) When the Committee is minded or resolves to grant or refuse planning permission contrary to the officer recommendation, officers should assist in recording the Committee's reasons for the decision. However, the reasons must be those of the Committee, not officers.

## **9. Officer Reports to Committee**

- 9.1 Reports to committee on planning matters must be accurate and cover all relevant points and no irrelevant matters. The officer's report will include a full description of the site and any related planning history. It will refer to the provisions of the Development Plans/Local Development Framework and all other relevant material planning considerations. It will include the substance of representations and the views of consultees.
- 9.2 The only written information which shall be taken into account in determining planning and related applications is that formally submitted to the Planning Officer in advance of the meeting date, so that they can assess it to avoid the Committee being misled or the decision being challenged on grounds of legality or maladministration. No papers shall be permitted to be circulated on the day of the meeting.
- 9.3 The report will clearly identify the key planning issues and material considerations to be taken into account. The report shall contain the merits for and against the application and will give a technical appraisal that clearly justifies the stated recommendation. Oral reporting to the committee (other than to update an existing report), will not normally occur unless a late representation identifies a material planning consideration which has not been addressed in the report in which case it will be reported by the Planning Officer together with any response by the applicant.
- 9.4 All reports will normally have a written recommendation either to conditionally approve or refuse the application. A planning officer may recommend that the matter is deferred if information needed for the meeting has not arrived or if significant issues have arisen since the preparation of the report which warrants deferment.
- 9.5 Where the recommendation is one of conditional approval, then all the proposed conditions will normally be attached to the report. To be lawful a planning condition must meet the six criteria specified in Circular 11/95 – The Use of Conditions in Planning Permissions and must be:
  - (a) Necessary; and

- (b) Relevant to planning; and
  - (c) Relevant to the development to be permitted; and
  - (d) Enforceable; and
  - (e) Precise; and
  - (f) Reasonable in all other respects.
- 9.6 The report must also give details of any requirement for a Planning Obligation Agreement under Section 106 of the 1990 Act (as amended). The subject matter of the planning obligations to be included in the Agreement should be justified in order to facilitate discussion at the Planning Committee.
- 9.7 Planning obligations are only appropriate where they make acceptable in planning terms developments that would otherwise be unacceptable and where all of the following five tests are satisfied:
- (a) it is relevant to planning; and
  - (b) it is necessary to make the proposed development acceptable in planning terms; and
  - (c) it is directly related to the proposed development; and
  - (d) it is fairly and reasonably related in scale and kind to the proposed development; and
  - (e) it is reasonable in all other respects
- 9.9 Where the officer's recommendation is for refusal, then the recommendation will specify the reasons for refusal and refer to all Development Plan/Framework Policies and all relevant policy guidance which justify that decision.
- 9.10 Where the officer's recommendation is contrary to the provisions of the Development Plan/Framework this will be clearly stated together with the material considerations which justify the recommendation.

## 10 Decisions Contrary to Officer Recommendation

- 10.1 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 courts have also stated that the personal circumstances of an applicant will rarely provide such grounds.**
- 10.2 When a proposal contrary to the officer's recommendation in the committee report is made and seconded, and the Chairman proposes to move to a vote on the proposal, the following procedure shall apply:
- (1) The proposer shall be asked by the Chairman to state the planning reasons for the proposal.
  - (2) The Director of Planning will be invited to address the Committee. The Director of Planning may:
    - (a) indicate that he/she has nothing to add; or

- (b) advise the Committee on the robustness of the suggested reasons for refusal / approval; and/or
  - (c) propose further or amended conditions, limitations or reasons; and/or
  - (d) give further planning or legal advice (if appropriate, requesting the matter be discussed in private session under Part 2); and/or
  - (e) request that the matter be deferred to the next meeting, giving reasons for so requesting.
- (3) If the Director of Planning indicates that he has nothing to add, the Chairman shall put the proposal to a vote.
  - (4) If the Director of Planning proposes further or amended conditions, limitations or reasons the Chairman shall ask the proposer if these are accepted.
  - (5) If the proposer accepts the Director of Planning's suggested amendments, the Chairman shall put the proposal as amended to a vote.
  - (6) If the proposer does not accept all of the Director of Planning's suggested amendments, the Chairman shall without debate put the proposal to a vote.
  - (7) If the Director of Planning asks for the item of business to be deferred, it shall be customary for the Chairman to invite the proposer to withdraw the proposal and then invite Members to defer the matter for one month to allow the Director of Planning to reconsider the matter in the light of the debate and present an updated report.
  - (8) If the proposer declines to withdraw the proposal, the Chairman shall without debate put the proposal to a vote.
  - (9) If a proposal to defer is not carried, the Chairman shall call for a further proposal, which could include a proposal to adjourn for a short break.

## **11. Officer's Role where a recommendation is not followed**

- 11.1 The Nolan Report considered the role of officers in the planning process and concluded that "*Planning Officers exist to advise Planning Committees, which are entitled to reach their own decisions, by attaching different weights to the various planning criteria which are relevant to an application*".
- 11.2 Officers shall give full support to the Authority's case where an appeal is made against the Authority's decision. However, planning officers shall adhere to the good practice advocated by the Royal Town Planning Institute and '*shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions*'. The same principles shall apply to other employees who have to act in accordance with their own professional codes.
- 11.3 Where at a meeting of the committee a proposal to grant or refuse any application is made which in the opinion of the Director of Planning or the Monitoring Officer is not based on reasonable planning grounds, they shall seek

to bring their concerns to the attention of members before a determination is made.

- 11.4 Where a planning officer has advised a committee that its decision is, in their professional opinion, not based on reasonable planning grounds, then that officer will not be required to give evidence on appeal, save in exceptional circumstances and having regard to any limitations imposed by the Royal Town Planning Institute's Code of Professional Conduct. Where necessary the Director of Planning will advise members that an external consultant should be used to put forward the Authority's case and members may be asked to give evidence on behalf of the Authority at any appeal.

## **12. Decision Making – Delegation to Officers**

- 12.1 The Authority's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers; those that will be referred to the Development Management Committee; and those that must be determined by the Authority.
- 12.2 Where officers are determining applications under their delegated powers, the case officer processing the application will complete an officer report which must record that all material planning considerations have properly been taken into account. The case officer will then make a recommendation to the Team Manager. The Team Manager will assess the report and recommendation and make the final decision on behalf of the Director of Planning. When necessary the Director of Planning's views will be sought and his recommendation will be final as laid out in the Delegation scheme.
- 12.3 In the case of a divergence of view and the rejection of the case officer's recommendation, the Team Manager's/Director of Planning's decision and planning justification must be recorded in full on the file. In the event that the case officer is a Team Manager then any delegated decisions taken by that officer will be referred to the Director of Planning for the final decision, which shall be recorded in the same manner.

## **13 Application by Members etc**

- 13.1 Applications for planning permission by serving and former members and officers and their close friends can easily give rise to suspicions of impropriety. In all correspondence and meetings etc, Members and Officers should clearly identify their connection with the Authority.
- 13.2 Where there is a proposal from a Member (or from a person with whom they live or by whom they are employed or with whom they have a close personal association), or where the Member has (for any reason) a prejudicial interest in the matter, the Member will:

- (a) inform the Director of Planning when the application is made or as soon as it comes to the attention of the Member; and
- (b) undertake not to discuss the application with any officer or Member who plays a role in the decision making process; and
- (c) take no part in the decision-making process; and
- (d) comply with the relevant sections of the Code of Conduct and this Guide.

## **14 Pre application advice**

- 14.1 Pre application advice can play a vital role in improving the quality of applications, reducing the number of submitted applications which are contrary to adopted policies, and speeding up the processing of applications once submitted. Indeed Government guidance does refer to the positive benefits that such guidance can bring to the planning process and the benefits of Members involvement particularly in larger more complex development proposals.
- 14.2 Members should at all times treat in strict confidence any pre application enquiry that has been shared with them by a planning officer. Very often such enquires are of a commercially sensitive nature or are made in confidence between potential applicants and the Authority. Some applicants may be sensitive to these matters being generally shared with their neighbours and other interested parties before the proposal has been finalised and submitted.
- 14.3 Whilst this Guide does not preclude Members involving themselves in minor application proposals such as householder developments, Members should normally only involve themselves in pre application enquiries on schemes which are more complex or which raise significant implications for local communities and the Authority at the invitation of the Director of Planning.
- 14.4 If Members are approached and asked to give pre application advice they shall refer those persons to the pre application advice protocol adopted by the Authority which sets out how such matters are dealt with. Members should restrict any comments they make to a general nature so that they can protect their position and that of the Authority.
- 14.5 If Members are invited to visit a site by a potential applicant they should only do so in accordance with the principles set out at para 6.4 above.