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25 September 2014

Dear Sir/Madam,

CONSULTATION ON GUIDANCE ON PLANNING ELEMENT OF COUNCILLORS' CODE OF CONDUCT

I am writing to inform you that the Department of the Environment has issued a consultation paper on guidance on the planning element of the councillors' code of conduct.

As part of the review of local government the majority of planning functions will transfer to the new 11 councils on 1 April 2015. The Local Government Act (NI) 2014 introduced a new ethical regime to local government. As part of this regime, the Department of the Environment issued a Code of Conduct (the Code) for councillors, which was approved by the Assembly on 27 May 2014. Part 9 of the Code, which contains the planning element, is not due to take effect until 1 April 2015.

The Code details the principles and rules of conduct which councillors are required to observe when acting as a councillor and when conducting council business. The draft guidance makes specific reference to the rules in the Code in relation to declaration of interests, lobbying and access to councillors, and decision-making, and explains under each heading how the rules apply to councillors and, specifically, to planning committee members, where applicable.

The aim of this guidance is to advise councillors how they should apply the principles and rules of the Code when it comes to dealing with planning. It is also there to provide protection for councillors by advising them of what they can and cannot do in relation to taking planning decisions. In addition, the Northern Ireland Commissioner for Complaints has indicated his office will rely on this guidance when it comes to investigating alleged breaches of the Code in relation to planning.

The consultation paper is available on the PlanningNI website at http://www.planningni.gov.uk/index/news/news_consultation/draft_guidance_planning_element_of_councillor_code_of_conduct.htm

Alternatively, you can request a copy by telephone: 028 9082 3487 or by text phone: 028 9054 0642 or by email: planning.reform@doeni.gov.uk

The closing date for receipt of comments is 21 November 2014.

Yours faithfully,



Beverley Cowan
Planning Policy Division



Department of the
Environment

www.doeni.gov.uk

GUIDANCE ON PLANNING ELEMENT OF COUNCILLORS' CODE OF CONDUCT

CONSULTATION

September 2014

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RESPONDING TO THIS CONSULTATION DOCUMENT

You are invited to send your comments on this consultation document.

All responses should be made in writing and sent to:

planning.reform@doeni.gov.uk or by post to:

Guidance on Planning Element of Code of Conduct Consultation
Planning Policy Division
Department of the Environment
6th Floor
Causeway Exchange
1 - 7 Bedford Street
Belfast BT2 7EG

The consultation period will last for 8 weeks and will end on 21 November 2014.

Additional copies of this document can be downloaded from the PlanningNI website at:

http://www.planningni.gov.uk/index/news/news_consultation.htm

or requested via the postal or email addresses above, or by telephone on (028) 90823487 or by textphone on (028) 90540642.

If you have any queries you can contact the following persons:

Cathy Pringle cathy.pringle@doeni.gov.uk 028 90823489

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The document is available in alternative formats: please contact us to discuss your requirements.

In keeping with our policy on openness, the Department intends to publish all responses received on its website. When publishing responses received on behalf of organisations, the Department will

also publish the organisation's name and address. When publishing responses received on behalf of individuals, the Department will not publish details of the individual's name and address.

If you have any comments or complaints about the consultation process itself (rather than the content of this document), these should be directed to the postal or e-mail addresses above.

BACKGROUND

1. As part of the review of local government the majority of planning functions will transfer to the new 11 councils on 1 April 2015. The Local Government Act (NI) 2014 introduced a new ethical regime to local government. As part of this regime, the Department of the Environment (the Department) issued a Code of Conduct (the Code) for councillors, which was approved by the Assembly on 27 May 2014. Part 9 of the Code, which contains the planning element, is not due to take effect until 1 April 2015. The Department undertook to provide guidance for councillors on the planning element of the Code and to consult on this guidance.
2. The Code details the principles and rules of conduct which councillors are required to observe when acting as a councillor and when conducting council business. The draft guidance makes specific reference to the rules in the Code in relation to declaration of interests, lobbying and access to councillors, and decision-making, and explains under each heading how the rules apply to councillors and, specifically, to planning committee members, where applicable.
3. This consultation paper seeks views on the draft guidance prepared by the Department.

PURPOSE OF THE GUIDANCE

4. For the first time in over 40 years (from 1 April 2015), local government will have responsibility for the majority of planning functions: from drawing up their own local development plans to taking decisions on planning applications and on potentially taking enforcement action against alleged breaches of planning control. This is a major cultural change, where elected representatives move from being consultees on planning matters to being the decision-takers.

5. Planning affects everyone, from local development plan decisions, which indicate what development can take place and where, to individual decisions on planning applications. It also impacts on the environment and on economic activity. It is essential, therefore, that the planning system is seen to operate in a fair and transparent manner.
6. The aim of this guidance is to advise councillors how they should apply the principles and rules of the Code when it comes to dealing with planning. It is also there to provide protection for councillors by advising them of what they can and cannot do in relation to taking planning decisions. In addition, the Northern Ireland Commissioner for Complaints has indicated his office will rely on this guidance when it comes to investigating alleged breaches of the Code in relation to planning.

GUIDANCE ON THE PLANNING ELEMENT OF THE COUNCILLORS' CODE OF CONDUCT



Department of the
Environment

www.doeni.gov.uk

INTRODUCTION

1. Parts 1-8 of the Northern Ireland Local Government Code of Conduct for Councillors (the Code) came into force on 28 May 2014 and Part 9 (the planning element) will come into force on 1 April 2015. This guidance is to assist members on the interpretation of Part 9. Failure to follow this guidance could be taken into account during investigations carried out by the Northern Ireland Commissioner for Complaints.
2. This guidance is of relevance to all councillors as all councillors will have contact with planning issues, either as advocates for or against planning applications, as members of the planning committee, or as members of the full council. Your specific role will vary depending on whether you are on a planning committee or not. The guidance applies equally to decision-making whether by planning committees or full council (in cases where the full council is called upon to make a decision on a planning-related matter).
3. The Code details the principles and rules of conduct which you are required to observe when acting as a councillor and in conducting council business and these principles and rules of conduct apply equally when you are undertaking the planning functions of the council. This guidance makes specific reference to the rules in the Code in relation to declaration of interests (section 6 of the Code), lobbying and access to councillors (section 7 of the Code), and decision-making (section 8 of the Code) and explains under each heading how the rules apply to councillors and, specifically, to planning committee members, where applicable. A glossary of planning terms is included at Annex B.
4. Members should refer, as necessary, to:
 - guidance issued by the Northern Ireland Commissioner for Complaints on the Code;

- guidance issued by the Equality Commission for Northern Ireland on section 75 obligations;
- the protocol for Working Relationships between Councillors and Local Government Officers; and
- their council's standing orders on the operation of planning committees.

Members should also seek advice from their planning officers and / or legal adviser, when required.

LOBBYING AND ACCESS TO COUNCILLORS

5. With councils taking on their new functions with regard to planning powers, it is understandable that lobbying is an area of concern to members: particularly for those members who will be in future the decision-makers on planning issues. Councillors will be moving from consultees on development plans and planning applications to being responsible for drawing up their own local development plans and making decisions on what development should be approved or refused in their council area. This is a major change in role. This guidance is here for your protection and to assist you by advising what you can and cannot do in relation to planning, whether you are a planning committee member or not.
6. Paragraph 7.4 of the Code states that, 'if you are lobbied on matters such as applications made under regulatory powers or matters of a quasi-judicial nature, such as the determination of certain licence applications, and you will have a role in the council's decision on that matter, you must:
 - (a) make it clear that you are not in a position to lend support for or against any such application; and
 - (b) direct any such representations to the appropriate department of the council.

What this means for planning committee members

7. The main role of the planning committee is to consider applications made to the council as the local planning authority and decide whether or not they should be approved (this is the process known as development management – see Annex B). In relation to the local development plan, the planning committee's role is to clear the local development plan before it is passed by resolution of the council. Enforcement often requires professional assessment as to whether development has met regulatory requirements and, if not, the steps required to address any identified breach of planning control. This activity may lead to action through the courts and it is recommended that enforcement should be carried out by planning officers, in accordance with the council's enforcement strategy (which should be approved by the planning committee), and not members.

Development management

8. Councillors, particularly members of the planning committee, can expect to be approached by applicants, agents, objectors and developers who wish to express their views on particular planning applications. It is a normal and perfectly proper part of the political process that any individual should be able to lobby the council or a councillor. However, if you are a member of the planning committee you should exercise caution and common sense when it comes to listening to those who would wish to lobby you about a particular planning application. It has to be recognised that there may be tension between your role as a local councillor, wishing to represent the views of particular constituents or groups, and your role as a planning committee member, **where your responsibility is to the whole community and not individual constituents or particular interests**. While you may wish to support the views of those you represent, you must accept that, if you wish to be a decision-maker as a planning committee

member, your primary duty is to act in the best interests of your council as a whole, in line with legislative and policy requirements. If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in that cause (see paragraph 15. below).

9. If an approach is made to you by an applicant, agent or other interested party, including other councillors, in relation to an existing or proposed planning application, you can listen to the views expressed but you must not favour any person, company, group or locality, nor appear to do so. If you do express an opinion, you must make it clear that you will not be in a position to make a decision on a particular application until you have heard all the evidence, including the planning officer's report, at the planning committee meeting. If you are approached, having listened to the views expressed, you can:
 - make known to planning officers what representations from constituents and other interested parties you have received on a planning application (either written or verbal);
 - assist constituents in making their views known to the relevant planning officer;
 - seek factual information about the progress of a case;
 - advise those who are lobbying that they should contact the relevant planning officer so their opinions can be included in the officer's report to the committee; and / or
 - advise those who are lobbying to write or speak to a member who is not on the planning committee.

Pre-application discussions

10. Sometimes a potential applicant for planning permission will approach the council in order to discuss an application before submitting it to the council. Such pre-application discussions can be of considerable benefit to both parties and are generally encouraged. However, it would be easy for such discussions to become, or be seen to become, part of the

lobbying process. While you are free to attend any pre-application discussions, it should always be made clear at the outset that discussions will not bind the council to making a particular decision and that any views expressed are personal and provisional, as members will need to weigh all material considerations before reaching a view on any application in due course. The same considerations should apply to any meetings / discussions which occur before a decision is taken.

11. If you are a member of the planning committee and you receive a request to attend or organise a meeting to discuss a proposal, you must refer the request to the appropriate planning officer, so that officers can arrange the meeting and be present and all parties are given an equal opportunity to present their point of view. As a planning committee member, your role is to learn about the emerging proposal and identify issues to be dealt with in further submissions. A formal record of attendees, issues raised and advice given should be maintained of the meeting and placed on the file / electronic record. A note should also be taken of any relevant phone conversations and placed on the file / electronic record.
12. You should not meet developers alone or put yourself in a position where you appear to favour a person, company or group.
13. It is important that any approaches by lobbyists, whether informal or otherwise, are formally recorded and that any formal representations made to you form part of the public information leading to any decision. You should inform the relevant planning officer (as soon as possible but before the decision notice is issued) of any approach, which will be documented and placed on the planning file / electronic record for public viewing.

14. Where you will be participating in making the decision as a member of the planning committee, you should not organise support for, or opposition to, a planning application; or lobby other councillors to promote a particular recommendation on a planning application.

Examples

A planning chair was suspended after lobbying other councillors to reject plans for homes to finance a stadium development. The councillor admitted he sent an email to other council members regarding his views on the application.

Councillor A was sentenced to 12 months in prison and banned from holding any public office for 5 years after he was found guilty of offering to influence a planning decision in favour of 2 developers.

15. However, as a planning committee member, you may decide that you cannot remain impartial and that you wish to support your constituents' views regarding a particular planning application. If you decide to adopt such a position you cannot then take part in the decision-making of the planning committee in relation to that application. You should make this position clear as soon as possible to the chair of the planning committee and planning officials. You have the same rights as any other councillor: you can lobby other planning committee members (provided you make it clear that you are doing so as a local councillor / resident and not as a planning committee member) and you are free to speak at the planning committee on behalf of constituents or other parties, provided the public are also allowed to attend the meeting for the same purpose, after which you must leave the room while the members consider the matter and not take part in the voting. This should be recorded in the minutes.

Political group meetings

16. As planning applications must be determined on their own merits, **political group meetings or discussions must not be used to decide how councillors should vote on an application.** While you are free to discuss your opinion on planning matters at political group meetings, you must not comply with political group decisions where these differ from your own.

Full council

17. Some councils may opt to have the full council act as the planning decision-maker on certain planning applications (e.g. where a major development is significantly contrary to the local development plan, or contentious cross-boundary applications). The same rules apply when the full council is the decision-making body – if you have lobbied on an application (either for or against) you should declare it and not take part in the decision-making. However, if the application was discussed at the planning committee and you made your initial views known you are still entitled to take part in the decisions to be made by the full council so long as you make it clear you will only make a final judgement when all the relevant material considerations are before the meeting that will determine the application. The key principle is that you cannot lobby for or against a planning application and then be a decision-maker on that application, whether the decision is taken by a planning committee or the full council.
18. You must never seek to influence planning officers to provide a particular recommendation on any planning decision. This applies equally to all councillors, whether they sit on a planning committee or not.

Local development plan

19. As a planning committee member your role in relation to the local development plan is to provide input to the local

development plan and to then clear the plan before it is ratified by the full council. You are likely to be lobbied by interested parties, including land owners, developers and community groups, both in connection with preparing policy, designating environmental and other policy areas, and especially with regards to the zoning of land. If you are approached, having listened to the views expressed, you can:

- make known to planning officers what representations from constituents and other interested parties you have received on the local development plan; and / or
- assist constituents in making their views known to the relevant planning officer.

You must not attempt to influence planning officers to zone land which would be to your advantage or the advantage of any individual or group (through, for example, persistent lobbying) or make public statements about pending policies and proposals in the draft plan prior to public consultation.

The same principle is equally applicable to all councillors.

20. As a member of the planning committee you will be given the opportunity to both present arguments in favour of or against proposals. However, this should be done in the interests of the public good and not to represent any private interest.

Once a decision is made members of the planning committee are advised to respect the decisions of that committee and not to actively seek to undermine their decisions. All local development plans will be subject to a public examination, allowing developers, land owners and residents the opportunity to present their views on the draft plan. A planning official will be available to present the corporate view of the planning committee. Whilst it would not be appropriate for a member of the planning committee to represent an objector by presenting a view contrary to that presented by the planning committee, it is reasonable for councillors not on the planning committee to advocate the position of an objector if

they so wish. However, again this should be subject to any general codes of conduct for council members.

What this means for non planning committee members

Development management

21. As a councillor you can encourage developers and others to engage with the council and residents in the planning process. Councillors who are not part of the decision-making process can make representations and address the relevant planning committee. You can also make known to planning officers what representations from constituents and prospective developers you have received on a planning application, attend public meetings / events, and assist constituents in making their views known to the relevant planning officer.
22. While you are free to lobby other councillors who are on the planning committee about a particular planning application (this should be to pass on your views and concerns or the views and concerns of your constituents) you should refrain from excessive lobbying: i.e. applying pressure on other councillors to obtain a commitment to vote in a certain way. You must not take any payment to lobby your council on a planning matter (this applies to all councillors).

Local development plan

23. You are free to pass on your views and those of your constituents with regard to the local development plan. However, you must not put undue influence on planning officers to include policies and proposals, such as the zoning of land in the local development plan, which would be to your advantage or the advantage of any individual or group (through, for example, persistent lobbying), or make public statements about pending policies and proposals in the draft plan prior to public consultation.

What this means for all councillors

Schemes of delegation

24. Each council is obliged to draw up a scheme of delegation which allows decision-making for local, generally non-contentious, applications to be delegated to a council's planning officers to act on the council's behalf in implementing its planning policies. Councillors should not lobby or pressure planners to come to a particular decision on those applications / consents which are delegated to them.

Enforcement

25. As a councillor you may also be the person who is first made aware of an alleged unauthorised development and you might - quite properly - wish to refer the matter to the council for further investigation and possible enforcement action. Once the initial referral has been made to the appropriate department for investigation, you should advise all subsequent inquirers to deal directly with the relevant department / officer, and you should not lobby for a particular outcome. This does not prevent you from seeking factual information about the progress of the case (subject to any data protection legislation).
26. You must not organise support or opposition, lobby other councillors, act as an advocate or put pressure on planning officers to either take or not take investigative or enforcement action. This applies equally to all councillors, whether members of the planning committee or not.

Examples

A council's deputy leader and head of planning were jailed for 2 and 5 years respectively for taking bribes from a developer to process a planning application.

A councillor who was caught on a hidden camera taking money was jailed for accepting a £500 bribe in return for attempting to ensure that a planning application would go through.

DECISION-MAKING

27. Paragraph 8.1 of the Code details the rules you should follow when participating in meetings or reaching decisions regarding the business of your council.

What this means for planning committee members

Development management

28. The important thing to remember is that planning applications should be determined on their own merits and that **decisions on planning applications cannot be taken until all the evidence has been presented at the relevant planning committee meeting and properly considered**. You should not clearly express your intention to vote in a particular way before the planning committee meeting: rather you should make it clear that you are willing to listen to all the considerations presented at the meeting before deciding on how to vote. If you have clearly made up your mind on a planning application in advance of the planning committee meeting you must not take part in the debate and the vote, otherwise you may leave the planning committee's decision susceptible to challenge by judicial review. This guidance is equally applicable to other meetings where planning decisions are taken, such as the full council.
29. This does not mean that you cannot have your own opinions about a planning application. It simply means that you should be open to listening to all the arguments and changing your mind in light of all the information presented at the planning committee meeting. You should always consider whether a reasonable onlooker, with knowledge of the relevant facts, would consider that you were biased. For example, if you state that, 'wind farms are blots on the landscape and I will oppose each and every one that comes before the committee', you cannot claim to have retained an open mind

on the issue or that you are prepared to determine each application on its own merits. If, however, you state, 'many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in this area', you should not be accused of having pre-judged the application as you are willing to have your mind changed.

30. Planning decisions can only be made on valid planning grounds (see Annex B). These are called material considerations and include all the fundamental factors involved in land use planning. Material considerations vary depending on the circumstances of each case and include the design of buildings, impact on neighbourhood, local development plans, published planning policy and representations from the public and elected representatives. Planning officers will provide the planning committee with a report with a recommendation on a particular proposal based on their professional opinion, taking into account all relevant material considerations, including information on representations received about the proposed development. This report forms the basis on which your decisions are made, although, as a councillor, you are not necessarily bound to agree with a planning officer's recommendation. This is acceptable where planning issues are finely balanced as there should always be scope for members to express a different view from officers. A planning committee can accept or place a different interpretation on, or give different weight to, the various arguments and material planning considerations.
31. However, if you propose, second or support a decision contrary to an officer's recommendation you will need to clearly identify and understand the **planning reasons** (which must fairly and reasonably relate to the application concerned) for doing so. The reasons for any decisions which are made contrary to the planning officer's recommendation **must be formally recorded** in the minutes of the planning committee

meeting and a copy placed on the planning application file / electronic record.

Examples

A planning committee chairman was severely criticised by the Local Government Ombudsman after he used his casting vote to approve plans submitted by a friend and colleague (another councillor), contrary to the officer recommendation to refuse permission. The Local Government Ombudsman said the only councillors who should have considered and voted on the application were those whose relationship with the councillor would not lead a member of the public to think that their decision, because of the relationship, would be biased. She found that reasonable weight was not given to the material policies while substantial weight was given to considerations of, at best, questionable relevance to the application.

The Local Government Ombudsman found that one council's failure to record a reason for the planning decision was maladministration and recommended two complainants be paid £250 each.

32. Councillors who reject a planning application that officers have advised them to accept risk being overturned on appeal (to the Planning Appeals Commission), with costs awarded against the council if no sound reasons for the decision have been given (for example, refusals based on the strength of public opinion and not the planning policies).
33. If the planning committee decides to approve an application against the officer's recommendation to refuse, the planning committee should be aware that, while there is no right to third party appeal, there is the possibility that the decision could be subject to judicial review.

Local development plan

34. The local development plan-making stage sets out how the council sees the area as developing and outlines the policies

against which individual proposals will be assessed. All councillors have a vital role in facilitating engagement with their communities in the production of planning policy by encouraging them to express their views on the plan-making process.

35. In law, planning applications should be determined in accordance with the local development plan, which is your council's policy in relation to what type and scale of development is appropriate and where it should be located. Failure to adhere to the plan may open your council up to challenge, unless material considerations indicate otherwise. If you propose, second or support a decision contrary to the local development plan you will need to clearly identify and understand the **planning reasons** for doing so, clearly demonstrate how these reasons meet the test of soundness (in particular, how the proposal has taken account of the Regional Development Strategy, the Community Plan and other relevant plans, policies and strategies and how it makes the plan's policies and proposals more coherent and effective) in order to justify overruling the local development plan. The reasons for any decisions which are made contrary to the local development plan **must be formally recorded** and a copy placed on the planning application file / electronic record.

DISCLOSURE AND DECLARATION OF INTERESTS

36. Section 6 of the Code refers to section 28 of the 1972 Local Government Act which sets out the duty required of councillors to declare any pecuniary interest, direct or indirect, in the course of a meeting. **You must not speak or vote on a matter in which you have a pecuniary interest.** If such a matter is to be discussed by your council, you must withdraw from the meeting whilst that matter is being discussed. You must also declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting. A

significant interest is one where you anticipate that a decision on the matter might reasonably be deemed to benefit or disadvantage you to a greater extent than other council constituents. Again, you must withdraw from any council meeting when the matter is being discussed. Paragraphs 6.6 – 6.11 of the Code detail under what circumstances dispensations to speak and vote may be granted.

What this means for planning committee members

37. The Code requires you to declare any pecuniary (financial) interest and withdraw from the meeting (for example, a planning application submitted by yourself, partner / spouse or family member). Where you have a significant private or personal non-pecuniary interest (e.g. a planning application submitted by a close friend, close associate, or body or organisation of which you are a member) you should declare this and you should ask yourself whether that declared interest might prevent you from taking part in any discussions or voting. In making this decision you should ask yourself whether a member of the public, knowing the facts of the situation, would reasonably think that you might be influenced by it. If so, you should leave the room for the duration of that item. Otherwise you are free to take part in the discussions and vote. **It is your own personal responsibility to determine whether you have any such interest and whether such an interest might be viewed as influencing your decision.** If in doubt you should seek advice from appropriate council officers (e.g. senior planning officers) or a legal representative.
38. If you submit your own planning application, you have the same rights as any member of the public to explain your proposal to an officer but you should not seek to improperly influence the decision. You may make written representations to officers about the proposal but you may not address the

planning committee (an agent could do this on your behalf). Again, you should declare your interest and leave the room during the debate and the vote.

39. If you have substantial land, property or other interests which would **require you to declare an interest and prevent you from voting on a regular basis** you should not sit on a decision-making committee that deals with planning applications. This is not intended to stop landowners etc. from sitting on planning committees; rather it is intended to ensure the efficient operation of the planning committee by limiting those who would be regularly called upon to declare they have an interest which would prevent them from voting. It is not so much the scale of any land or property holdings but the extent to which they might affect your ability to carry out the duties of a planning committee member in an efficient manner.
40. If you work as a lobbyist for a developer you must declare this as an interest and you must not then be involved in any decision-making process relating to, or potentially affecting, that developer. You must not act as an agent for people pursuing planning matters within your council even if you are not involved in the decision-making on it.

What this means for non planning committee members

41. The rules in relation to the disclosure and declaration of interests apply to all councillors, whether they sit on a planning committee or not.

Summary of dos and don'ts

You must:

- act in accordance with the councillors' mandatory Code of Conduct at all times;
- act in the public interest with regards to planning matters;
- act fairly and openly and determine each application on its own merits;
- report any approaches by lobbyists and any representations made to you to the relevant planning officer;
- declare any relevant interests and decide whether that interest prevents you from taking part in the decision-making process.

You must not:

- give grounds to doubt your impartiality;
- use your position improperly for personal gain or to advantage any individual or group, including relatives, friends or close associates;
- where you will be making the decision, express an opinion that may indicate you have already made up your mind about a particular application before you have heard all the evidence and arguments at the committee meeting;
- vote on applications in accordance with political group meetings;
- lobby for a particular outcome on a planning application (if you intend to take part in the decision-making process);
- seek to pressure/influence planning officers to provide a particular recommendation on a planning application;
- seek to pressure/influence planning officers to either take or not take enforcement action;
- seek to pressure/influence planning officers to include policies and proposals, such as the zoning of land in the local development plan, which would be to your advantage or the advantage of any individual or group.

Glossary of planning terms

Northern Ireland Commissioner for Complaints

The 2014 Act gives the Northern Ireland Ombudsman, in his capacity as the Northern Ireland Commissioner for Complaints, responsibility for the operation of the enforcing mechanisms of the Councillors' Code of Conduct. The 2014 Act extends the functions of the Commissioner's Office to include the investigation of, and adjudication on, failure to comply with the Code.

Local development plan

The local development plan is central to the planning system. It sets out each council's policies for how places should change; where homes and businesses should be located; and how roads, schools etc. will be provided. The local development plan forms the basis for public and private investment decisions, providing a degree of certainty as to how land will be developed. In law, planning applications should be determined in accordance with the local development plan unless other material considerations indicate otherwise. This means that where land is zoned for a particular use, the planning committee should ensure it is reserved for that use; for example, housing on land zoned for housing should be approved unless the design and layout fails in terms of the environmental, open space and access standards, or its design and layout has a detrimental impact on the character of the area or neighbouring amenity.

Local development plans allocate appropriate land for different types of land use and, as well as setting out the main planning requirements which developers are expected to meet in respect of particular zoned sites, they may also show designations such as conservation areas, areas of outstanding natural beauty, sites of local nature conservation importance and so on.

Soundness

To be 'sound' a core strategy should be justified, effective and consistent with regional policy: i.e. the document must be founded on a robust and credible evidence base; it must reflect the most appropriate strategy when considered against the reasonable alternatives; and it must be deliverable, flexible, and able to be monitored.

Development management

Development management is the processing of planning applications and other consents. The main role of the planning committee is to consider applications made to the council as the local planning authority and decide whether or not they should be approved.

Material considerations

There is no statutory definition of what constitutes a material consideration but there are two main tests for deciding whether a consideration is material and relevant:

- it should serve or be related to the purpose of planning. It should therefore be related to the development and use of land; and
- it should fairly and reasonably relate to the particular application.

Generally a material consideration is a planning issue which is relevant to the application and can include national, European and council policies, comments by the public and by organisations the council has consulted, the design of the proposed development, and the effect of the plan on the environment.

In many respects it is easier to identify what is not a material consideration or is not relevant to planning, and therefore what should not form the basis of a decision on a planning application. The matters below are not considered to be material considerations:

- the protection of private interests, e.g. loss of views or competition between businesses;
- moral considerations, e.g. sex shops, betting offices or religious objections to licensed premises;

- political considerations or ideological dislikes, e.g. construction of private schools or hospitals;
- the cost of the development;
- the applicant's lack of ownership of the site (planning permission relates to the land and not to the person seeking planning permission);
- issues covered by other legislation, e.g. building safety which is the responsibility of building control.

Valid planning matters that should be taken into account include:

- the local development plan;
- regional planning policy;
- emerging policies in a local development plan that is not yet approved or adopted;
- the planning history of the site, particularly any recent appeal decisions relating to the same land;
- the suitability of the site for the proposed development;
- the suitability of the type of development proposed in terms of compatibility with neighbouring property and the locality;
- design issues, including the use of materials, the height, scale, bulk and layout of the development;
- potential loss of privacy or overshadowing of adjoining properties;
- the potential adverse impacts on adjoining property from noise, odours, fumes, etc;
- the economic benefits of the development through the creation of new jobs or possibly loss of local employment;
- the impact of the development on the built or natural heritage of an area.

This list is not exhaustive but it does represent the considerations taken into account in most planning decisions. The relative weighting given to these various considerations is a matter for judgement in each case. Arguably, the most difficult planning decisions are those where the planning merits of the case are in favour of granting permission, but there are large numbers of local public objections to the proposed development. It is for you as an elected member to decide how important these material considerations are, bearing in mind the provisions of your local development plan.

Conditions

Most applications are granted permission subject to conditions. Conditions enable developments to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

Schemes of delegation

Section 31 of the Planning Act (NI) 2011 requires each district council to introduce schemes of delegation. Schemes of delegation allow decision-making for local, generally non-contentious, applications to be delegated to a council's planning officers to act on the council's behalf in implementing its planning policies. The details of each delegation scheme, which will only relate to applications within the category of local developments, will be for individual district councils to determine (a scheme of delegation cannot include major or regionally significant applications).

This means that the majority of planning applications (and other consents such as listed buildings, advertisements etc.) should be determined by planning officers rather than by the direct consideration and vote of the planning committee; however, such decisions are still, legally, decisions by the council.

IMPACT ASSESSMENTS

1. Under section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the proposed guidance will not lead to discriminatory or negative differential impact on any of the section 75 groups.
2. A partial Regulatory Impact Assessment has not been carried out as there are no costs associated with this guidance document. The Department considers that the guidance contained in this document is fully compliant with the Human Rights Act 1998.
3. It is not considered that this guidance would have a disproportionate impact on rural areas or any implications for the anti-poverty and social exclusion strategy.
4. The Department welcomes views and comments on whether the conclusions contained in any of the above assessments are correct.
5. The Department will continue to monitor and review the effectiveness of the guidance issued and will revise the guidance as and when needed.
6. The proposals are being subjected to 8 weeks of public consultation. The standard 3 month consultation period is not considered necessary in this case given the narrow range and limited impact of the proposals involved.

Freedom of Information Act 2000 – Confidentiality of Consultations

1. Please note that the Department may publish responses to this consultation document or a summary of responses. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
 - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
 - the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature; and

- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk/>)

List of Consultees

20:20 Architects
Action on Hearing Loss
Action Renewables
Age NI
An Munia Tober
Aquaculture Initiative EEIG
Archbishop Of Armagh & Primate Of All Ireland
Arcus Architects
Arqiva
Association for Consultancy and Engineering
Atlas Communications
Autism NI
B9 Energy Services Ltd
Bahai Council for NI
Bar Library
Barnardos NI
BBC Engineering Information Department
Belfast Butterfly Club
Belfast Civic Trust
Belfast Harbour Commissioners
Belfast Hebrew Congregation
Belfast Healthy Cities
Belfast Hills Partnership
Belfast International Airport
Belfast Metropolitan College
Belfast Metropolitan Residents Group
Belfast Solicitors Association
Brennen Associates
British Deaf Association (NI)
British Telecom (NI)
Bryson House
Building Design Partnership
Cable & Wireless Communications
Campaign for Better Transport
Cara Friend
Carers Northern Ireland
Carey Consulting
Catholic Bishops of NI
Causeway Coast & Glens Heritage Trust
Chartered Institute of Architectural Technologists
Chartered Institute of Environmental Health
Chartered Institute of Housing
Chief Executive of the NI Judicial Appointments Commission
Chief Officers 3rd Sector
Children's Law Centre
Chinese Welfare Association
Church of Ireland
Chrysalis Women's Centre

Coiste – Na N-iarchimi
 City of Derry Airport
 Civil Aviation Authority
 Civil Law Reform Division
 Coleraine Harbour Commissioners
 Communication Access
 Committee for the Administration of Justice
 Communities and Local Government
 Community Development and Health Network (NI)
 Community Places
 Community Relations Council
 Confederation of British Industry, NI Branch
 Construction Employers Federation
 Construction Register Ltd
 Council for Catholic Maintained Schools
 Countryside Access & Activities Network for NI
 Courts and Tribunal Services
 Crown Castle UK Ltd
 Cruse Bereavement Care (NI)
 Derryhale Residents' Association
 Derry Well Woman
 Development Planning Partnerships
 Disability Action
 Down's Syndrome Association
 Energy Saving Trust Northern Ireland
 Enniskillen Airport
 Environment and Planning Law Association of NI
 Environmental Health Services Department
 Equality Coalition
 Equality Commission for NI
 Falls Community Council
 Falls Women's Centre
 Family Planning Association NI
 Federation of Small Businesses
 Ferguson & McIlveen
 Fisher German LLP
 Food Standards Agency NI
 Foyle Women's Information Network
 Friends of the Earth
 Geological Survey of Northern Ireland
 George Best Belfast City Airport
 Gingerbread Northern Ireland
 Health and Safety Executive Northern Ireland
 Health And Social Services Boards and Trusts
 HM Council of County Court Judges
 HM Revenue & Customs
 Human Rights Commission
 Indian Community Centre
 I-Document Systems
 Information Commissioners Office

Institute of Professional Legal Studies
 Institute Of Directors
 Institute of Historic Building Conservation
 Institution of Civil Engineers (NI Association)
 International Tree Foundation
 Invest NI
 Kenneth Crothers, Deane & Curry
 Lagan Valley Regional Park Officer
 Landscape Institute NI
 Larne Harbour Commissioners
 Law Centre (NI)
 Liz Fawcett Consulting
 Local Government Staff Commission NI (LGSC)
 Londonderry Port & Harbour Commissioners
 Lord Chief Justice's Office
 Lough Neagh and Lower Bann Management Committees
 LPG Association
 Magherafelt Women's Group
 Magistrates Court
 Manufacturing Northern Ireland
 Marks and Spencer
 McClelland/Salter Estate Agents
 MENCAP
 Men's Action Network
 Men's Project – Parent's Advice Centre
 Methodist Church In Ireland
 Michael Burroughs Associates
 Ministerial Advisory Group for Architecture and the Built Environment in
 Northern Ireland
 Ministry of Defence
 Mobile Operators Association
 Mono Consultants Limited
 Mourne Heritage Trust
 Multi-Cultural Resource Centre
 National Air Traffic Services (NATS)
 National Society for the Prevention of Cruelty to Children (NSPCC)
 National Trust
 Newry and Mourne Women Limited
 Newtownards Aerodrome
 NI Association for Mental Health
 NI Association of Citizens Advice Bureau
 NI Chamber of Commerce and Industry
 NI Chamber of Trade
 NI Independent Retail Trade Association
 NI Islamic Centre
 National Pensioners Convention, NI
 NI Women's Aid Federation
 NI Women's European Platform
 NIACRO
 NIC/ICTU

NICARE
 NICOD
 NIPSA
 North West Architectural Association
 Northern Builder
 Northern Ireland 2000
 Northern Ireland Agricultural Producers Association
 Northern Ireland Ambulance Service
 Northern Ireland Amenity Council
 Northern Ireland Association Engineering Employer's Federation
 Northern Ireland Blood Transfusion Service Agency
 Northern Ireland Council For Ethnic Minorities
 Northern Ireland Court Service
 Northern Ireland District Councils
 Northern Ireland Economic Council
 Northern Ireland Education and Library Boards
 Northern Ireland Electricity Plc
 Northern Ireland Environment Committee
 Northern Ireland Environment Link
 Northern Ireland Federation of Housing Associations
 Northern Ireland Fire and Rescue Service
 Northern Ireland Government Departments
 Northern Ireland Housing Council
 Northern Ireland Housing Executive
 Northern Ireland Law Commission
 Northern Ireland Local Government Association
 Northern Ireland Members of the House of Lords
 Northern Ireland MP's, MEP's, Political Parties and MLA's
 Northern Ireland Office
 Northern Ireland Public Health Agency
 Northern Ireland Quarry Products Association
 Northern Ireland Regional Medical Physics Agency
 Northern Ireland Women's Rural Network
 Northern Ireland Tourist Board
 Northern Ireland Water Ltd
 O2
 OFCOM
 Office of Attorney General for Northern Ireland
 Orange
 Ostick and Williams
 Parenting NI
 Participation & the Practice of Rights Project
 Participation Network NI
 Phoenix Natural Gas Ltd
 Planning Appeals Commission
 Planning Magazine
 Playboard N.I. Ltd
 POBAL
 Policing Board Of Northern Ireland
 Polish Association

Pragma Planning
 Presbyterian Church In Ireland
 PSNI
 Quarryplan Ltd
 Queens University
 Renewable UK
 RICS NI
 Rivers Agency
 RJM Architects
 Robert Turley Associates
 Royal National Institute of Blind People (RNIB)
 Royal Society for Protection of Birds
 Royal Society of Ulster Architects
 Royal Town Planning Institute
 Royal Town Planning Institute (Irish Branch, Northern Section)
 RPS Group PLC
 RTPI Irish Branch (Northern Section)
 Rural Community Network
 Rural Development Council for Northern Ireland
 Rural Support
 Save the Children
 Scottish Government
 SENSE NI
 Society of Local Authority Chief Executives
 Southern Waste Management Partnership
 Sport NI
 Statutory Advisory Councils (including Historic Buildings Council, Historic
 Monuments Council and Council for Nature Conservation and the
 Countryside)
 Strangford Lough Advisory Council
 Strangford Lough Management Committee
 Sustrans
 The Architectural Heritage Fund
 The Board of Deputies of British Jews
 The Cedar Foundation
 The Commissioner for Older People for Northern Ireland
 The Executive Council of the Inn of Court of NI
 The General Consumer Council for NI
 The Guide Dogs for the Blind Association
 The Law Society of Northern Ireland
 The NI Commissioner for Children and Young People
 The NI Council for Voluntary Action
 The Rainbow Project
 The Senior Citizens Consortium Sperrin Lakeland
 The Utility Regulator
 The Women's Centre
 Three
 T-Mobile
 Todd Planning
 Town and Country Planning Association

Training for Women Network Ltd
Translink
Travellers Movement NI
Turley Associates
Tyrone Brick
Ulster Angling Federation
Ulster Architectural Heritage Society
Ulster Farmers' Union
Ulster Society for the Protection of the Countryside
Ulster Wildlife Trust
ULTACH
UNISON
University of Ulster
Urban and Rural Planning Associates
UTV Engineering Information Department
Virgin Media
Vodafone Ltd
Volunteer Now
Warrenpoint Harbour Authority
Waterways Ireland
Welsh Government
WDR & RT Taggart
Western Group Environmental Health Committee
Wildfowl and Wetland Trust
Women's Forum NI
Women's Resource and Development Agency
Women's Support Network
Woodland Trust
World Wildlife Fund (NI)
Youth Council For Northern Ireland