



NILGA response to the Department of the Environment Consultation on Guidance on Planning Element of Councillor's Code of Conduct

This response has been drafted by the Northern Ireland Local Government Association (NILGA), in response to the Department of the Environment's consultation on Guidance on the Planning element of the Councillor's Code of Conduct.

For further information or to discuss any of the issues highlighted, please contact Fiona Douglas at the NILGA Offices: Email: f.douglas@nilga.org Tel: 028 9079 8972

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17th September 2014

1.0 Introduction

NILGA, the Northern Ireland Local Government Association is the representative body for local authorities in Northern Ireland. The membership is presently (until April 2015) comprised of the 26 local borough, district and city councils and the organisation is supported by all the main political parties in Northern Ireland.

Elected member conduct, ethics and standards are important issues for local government, and increasingly so in the ongoing programme of local government reform, when new statutory obligations will be placed on councils in relation to planning. NILGA therefore is pleased to respond to this consultation and would like to thank the Department for Environment for the opportunity to do so. We trust that the views of local government will be taken into account.

The Department advises that the draft guidance is to assist members on the interpretation of Part 9 of the Code and that the draft guidance makes specific reference to the rules in the Code in relation to declaration of interests (section 6 of the Code), lobbying and access to councillors (Section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), 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.

NILGA's response will consider each of these in turn.

The Department explains that the aim of the guidance is to advise councillors how they should apply the principles and rules of the Code when it comes to dealing with planning. It further explains that 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. It is also advised that failure to follow this guidance could be taken into account during investigations carried out by the Northern Ireland Commissioner for Complaints.

NILGA welcomes the guidance and commends the level of information included to clarify what is acceptable and what is unacceptable in relation to elected members and planning, whether councillors are members of planning committees or not. It is NILGA's view, that the guidance includes much of the necessary information that a councillor will require to inform their understanding of Section 9 of the code of conduct. In particular, the guidance stresses that councillors will be moving from consultees on development plans and planning applications to being responsible for drawing up their own development plans and making decisions on what development should be approved or refused in their council area. NILGA appreciates greatly the huge departure in role for councillors and their particular concerns in relation to lobbying and access to councillors. NILGA suggests that guidance regarding lobbying and access is supplemented with a scenario based dos and don'ts that is more accessible and easier to navigate. NILGA has put together a suggested supplementary leaflet for councillors which are included at Annex A.

2.0 Key Issues

2.1 Lobbying and access to councillors

The guidance explains that Councillors will be undergoing a major change in role whereby they 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. The draft guidance advises of the steps that a councillor can take having been approached by an applicant, agent of other interested party, including other councillors, in relation to an existing or proposed planning application. NILGA suggests that the suggested steps that the guidance outlines are put forward and expressed in more robust language. NILGA considers that it is the following, of these steps, and the recording of them that will maximise the level of protection for councillors. Further, the suggested supplementary leaflet approach which we have attached at Annex A will enable councillors to identify expediently the steps they need to take to ensure that they are not leaving themselves open to challenge. It is our view that this structure lends itself well to guiding councillors against the various scenarios which may arise.

In relation to political group meetings, NILGA seeks clarification on how this will work in practice given that the majority of political group meetings are held behind closed doors. In our experience, in such circumstances, there is generally a reliance on the integrity of the party members involved. NILGA is unclear about the political party disciplinary approaches in Northern Ireland. It is our understanding that this is formalised amongst Parties in other parts of the UK. If there are formal policies and procedures in Northern Ireland then the guidance should make reference to these.

The guidance considers the full council approach to planning decision making and advises that 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.

NILGA considers this a key piece of information within the guidance and that it should be easily accessible to the reader and therefore suggests that this is emboldened. It is

NILGA's view that all key principles included in this guidance should be highlighted for ease of reference for the reader.

Paragraph 19 in relation to the zoning of land advises that 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. NILGA considers this part of the guidance ambiguous and that this should be made clearer.

The guidance advises that as a member of the planning committee members 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 private interest. NILGA suggests the development of criteria for determining what is in the public interest.

Schemes of Delegations and enforcement

The draft guidance advises that 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.

In relation to enforcement, the guidance advises that enforcement 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. NILGA seeks clarification on whether planning officers should be responsible for all enforcement activity or based on the scheme of delegation approach. Further, Councils already operate enforcement policies and procedures for quasi-judicial functions and NILGA urges that there is an alignment between what is being put forward in this guidance and what councils already have in place.

Also, NILGA suggests that case study examples included in the draft guidance should be appropriately placed to emphasise the advice the guidance seeks to provide. It is our view that the example preceding paragraph 26

Decision Making

Paragraph 30 advises that planning decisions can only be made on valid planning grounds and explains that these are called material considerations. It further advises that material considerations vary depending on the circumstances of each case and names but a few and refers the reader on to Annex B for full detail. NILGA suggests that there should be some distinctions made between those material considerations that will be valid in every single case and those that are applicable on a case by case basis.

In relation to a councillor not necessarily being bound to agree with a planning officer's recommendation the guidance advises that this is acceptable where planning issues are finely balanced as there should always be scope for members to express a difference of view from officers. NILGA considers the case study example usage throughout the document incredibly helpful and suggests that an example is used to illustrate what is being advised here.

Disclosure and Declaration of Interests

Paragraph 39 advises that if a councillor has substantial land, property or other interests which would require them 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. NILGA consider the use of “substantial” open to interpretation and recommends that the guidance is more specific on this.

Annex A

Lobbying and access to councillors

Local Development Plan

Planning Committee Members	
Context	<p>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.</p> <p>You are likely to be lobbied by interested parties, including landowners, 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.</p> <p>All local development plans will be subject to 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.</p>
Steps required	<p>If you are approached, having listened to views expressed, you can:</p> <ul style="list-style-type: none"> • 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.
Do's	As a planning committee member 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.
Don'ts	<p>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.</p> <p>Once a decision is made members of the planning committee area advised to respect the decisions of that committee and not to actively seek to undermine their decisions.</p>
Councillors not taking planning decisions	
Context	<p>It is reasonable for councillors who are 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.</p> <p>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.</p>
Dos	You are free to pass on your views and those of your constituents with regard to the local development plan.
Don'ts	You must not put undue influence on planning officers to include policies and proposals, such as 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.
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Development Management

	Members of Planning Committees	
Context	It is a normal and perfectly proper part of the planning process to be approached by applicants, agents, objectors and developers who wish to express their views on particular planning applications.	
	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. If you are lobbied on matters such as applications made under regulatory powers or matters of a quasi-judicial nature and you will have a role in the council's decision on that matter, you must:	
	<ul style="list-style-type: none"> • Make it clear that you are not in a position to lend support for or against any such application; • Direct any such representations to the appropriate department of the council; 	
	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. Your primary duty is to act in the best interests of your council as a whole, in line with legislative and policy requirements.	
	Informal	Formal
Approach	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.	If you are a member of the planning committee and you receive a request to attend or organise a meeting to discuss a proposal there are steps that need to be take.
Steps required	<ul style="list-style-type: none"> • Make known to the 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 relevant planning officer; • Seek factual information about the progress of a case; • Advise those who are lobbying that 	<ul style="list-style-type: none"> • 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. • A formal record of attendees, issues raised and advice given should be maintained of the meeting and placed on the file /

	<p>they should contact the relevant planning officers so their opinions can be included in the officer's report to the committee; and or</p> <ul style="list-style-type: none">• Advise those who are lobbying to write or speak to a member who is not on the planning committee.	<p>electronic record.</p> <ul style="list-style-type: none">• A note should be taken of any relevant phone conversations and placed on the file / electronic record.
Dos	<p>Sometimes a potential applicant for planning permission will approach the council in order to discuss an application before submitting to council. Such pre-application discussions can be of considerable benefit to both parties and are generally encouraged. 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.</p> <p>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.</p> <p>You should inform the relevant planning officer (as soon as possible but before the decision notice is issued) of any approach, will be documented and placed on the planning file / electronic record for public viewing.</p> <p>As a planning committee member you may decide that 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.</p>	
Don'ts	<p>You should not meet developers alone or put yourself in a position where you appear to favour a person, company or group.</p> <p>Where you are participating in making decisions 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 particular recommendation on a planning application.</p> <p>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.</p>	
Planning decision maker unable to remain impartial		
Context	<p>As a planning member, you may decide that you cannot remain impartial and that you wish to support your constituents' views regarding a particular planning application.</p> <p>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 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.</p>	

	<p>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 relevant material considerations are before the meeting that will determine the application.</p>
Steps required	<p>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.</p> <p>You should make this position clear as soon as possible to the chair of the planning committee and planning officials.</p>
Dos	<p>You have the same rights as other councillors, 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.</p>
Don'ts	<p>You cannot lobby for or against a planning application and then be a decision-maker on that application, whether the decision is taken by the planning committee or the full council.</p> <p>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.</p>
Councillors Not Taking Planning Decisions	
Context	<p>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.</p> <p>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.</p>
Dos	<p>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)</p>
Don'ts	<p>You should refrain from excessive lobbying: i.e. applying pressure on other councillors to obtain a commitment to vote in a certain way.</p> <p>You must not take any payment to lobby your council on a planning matter (this applies to all councillors).</p>