



Dartmoor National Park Authority

Development Management

Good Practice Guide

For

Members

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The Good Practice Guide

- ❖ 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. 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.**

- ❖ The 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.

- ❖ 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.

- ❖ It is essential induction reading for new members and a useful reminder for more experienced members.

- ❖ 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 (Committee), meetings of the Authority when exercising other planning functions and less formal occasions, such as 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 and site visits.

- ❖ If you have any doubts about the application of this Guide to your own circumstances, please seek advice from the Monitoring Officer at an early stage and preferably well before any meeting takes place.

Public Confidence in Decision Making

- ❖ One of the key purposes of the planning system is to regulate the development and use of land in the 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, and appear to be made, openly, impartially, with sound judgement and for justifiable planning reasons.
- ❖ The Members' Code of Conduct sets out general responsibilities and obligations for Members, addresses the issue of personal and pecuniary interests, registration and declaration of interests and gifts and hospitality.
- ❖ This Guide is intended to supplement the Code of Conduct in the context of development management.
- ❖ Members must always declare pecuniary, registerable and personal 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.**
- ❖ Where your interest is personal and a reasonable person with knowledge of the relevant facts would regard it as so significant that it is likely to prejudice your judgement of the public interest, you should withdraw from the room or chamber where a meeting considering the business is being held, at the commencement of the consideration of that business at that meeting, unless you have obtained a dispensation from the Authority's Monitoring Officer:
 - ***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).**

Integrity of Committee Decisions

❖ Public perception can be influenced by a number of issues:

- Pre-determination
- Membership of another Local Authority
- Contact and lobbying
- Site visits
- Applications by people with close relationships with Dartmoor National Park Authority

❖ Predetermination

- 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.
- Pre-determination arises when a Member's mind is closed to the consideration and weighing of the relevant factors.
- 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.
- 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 withdraw from the meeting.
- 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.

❖ Membership of another Local Authority

- If you are also a member of a County, District or 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.
- 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.

❖ Contact and lobbying

- This section of the Good Practice Guide is intended to ensure:
 - that high standards are maintained when planning decisions are taken;
 - in particular that the integrity of the decision-making process is not impaired, either in reality or in perception, through lobbying;
 - 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).*
- 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 to make a particular recommendation;
- Where a Member has been lobbied, he/she should report this fact to the Committee to be noted in the minutes. 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.
- 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.

❖ **Site Visits**

- 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.
- 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. – (e.g. 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.
- The minutes shall record the reason for the proposed site visit.
- Members should not enter a site which is subject to a planning application other than as part of an official site visit, even in response to an invitation, 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, **and**
 - you have first spoken to or notified the Head of Development Management about your intention to do so and why (which will be recorded on the file) **and**
 - you have the permission of the owner of the land.
- 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.

❖ Applications by people with close relationships with Dartmoor National Park Authority

- 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 the applicant's connection with the Authority.
- 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:
 - inform the Head of Development Management when the application is made or as soon as it comes to the attention of the Member; and
 - undertake not to discuss the application with any officer or Member who plays a role in the decision making process; and
 - take no part in the decision-making process; and
 - comply with the relevant sections of the Code of Conduct and this Guide.

Decision Making

- ❖ 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.

- ❖ The Head of Development Management or his/her nominee shall be present at every meeting of the Development Management Committee, to provide advice and assistance to Members as required.
- ❖ The Authority's appointed legal adviser will be available – either present at the meeting or 'on call' – to advise or assist with legal, procedural or governance issues, as required.
- ❖ Decisions shall be made by simple majority vote in accordance with the Authority's adopted Standing Orders and in particular the guidance in Appendix 9 on voting procedures.
- ❖ 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 (including the full duration of the officer report).
- ❖ Upon calling for a vote, the Chairman shall if requested by the Head of Development Management (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
- ❖ 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 determined by the Head of Development Management.
 - ❖ 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 Head of Development Management in writing not less than 48 hours prior to the meeting, so that the question can be considered and a full response given.

Decisions Contrary to Officer Recommendation

- ❖ 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.
- ❖ 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:
 - The proposer shall be asked by the Chairman to state the planning reasons for the proposal.
 - The Head of Development Management will be invited to address the Committee. The Head of Development Management may:
 - indicate that he/she has nothing to add; or
 - advise the Committee on the robustness of the suggested reasons for refusal / approval; and/or
 - propose further or amended conditions, limitations or reasons; and/or
 - give further planning advice (if appropriate, requesting the matter be discussed in private session under Part 2); and/or
 - request that the Authority's appointed legal advisor gives legal advice (if appropriate, requesting the matter be discussed in private session under Part 2); and/or
 - request that the matter be deferred to the next meeting, giving reasons for so requesting. Where such a request is made, the Committee should accede to that request.

- If the Head of Development Management indicates that he has nothing to add, the Chairman shall put the proposal to a vote.
- If the Head of Development Management proposes further or amended conditions, limitations or reasons, the Chairman shall ask the proposer if these are accepted.
- If the proposer accepts all of the Head of Development Management's suggested amendments, the Chairman shall put the proposal as amended to a vote.
- If the proposer does not accept all of the Head of Development Management's suggested amendments, the Chairman shall without debate put the proposal to a vote.
- If the Head of Development Management 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 move that the matter be deferred for one month to allow the Head of Development Management to reconsider the matter in the light of the debate and present an updated report. It shall be customary for the proposer to agree to the Chairman's request to withdraw the proposal.
- If the proposer declines to withdraw the proposal, the Chairman shall without debate put the proposal to a vote.
 - If a proposal to defer is not carried, the Chairman shall call for a further proposal, which could always include a proposal to adjourn for a short break.

Pre-application Advice

- 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.
- 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.
- Members should 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 Head of Development Management.
- 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.

- 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.