

Published: January 2005



Local Government Association



Member engagement in planning matters

"There is a new emphasis on the development of effective partnerships, a better and more creative engagement with stakeholders and the expressions of a strategic vision for the future of their communities."

David Sparks - chair of LGA environment board and councillor, Dudley Metropolitan Borough Council

"Much can be done to refine initial draft proposals by way of pre-application discussions. The aim is to ensure both that the submitted proposals are likely to be acceptable and that the final determination period is not extended unnecessarily. Pre-application discussions are to be encouraged."
Quarry Products Association

"ACSeS welcomes this essential guide which will assist decision-makers to avoid the pitfalls associated with determining planning applications. Pre-planning application discussions involving applicants for planning permission and councillors, although sensitive, can be useful and successful if managed within a robust and structured framework with due regard to issues of probity."

ACSeS - The Association of Council Secretaries and Solicitors

The LGA's guide 'Probity in planning' has topped the association's best seller list for the last two years since its revision in 2002. Not surprisingly, in an area that is frequently contentious and the subject of competing interest, members are keen to understand and act in accordance with good practice. Member structures and the planning system itself have been the subject of major overhaul with the provisions of the 2000 local government legislation and the 2004 planning Act. In a climate of culture change in planning, the expectations of members' involvement and engagement in the process are being redefined. There is a new emphasis on the development of effective partnerships, a better and more creative engagement with stakeholders and the expressions of a strategic vision for the future of their communities. These aspects are particularly relevant to the planning process where members have to balance the needs for encouraging sustainable development with their role in representing the best interests of their communities and being seen to operate properly and impartially. These notes (which have been prepared with the endorsement of ACSeS, the Association of Council Secretaries and Solicitors) are intended to encourage and confirm the role and value of pre application discussions when carried out within a clearly constructed and well communicated format.

David Sparks - chair of LGA environment board and councillor, Dudley Metropolitan Borough Council

Levels of engagement

Members' involvement with the planning process can take place at many different levels - from being asked by a local resident for guidance on how to make a planning application, to a request from a major developer for an expression of the council's policies and the 'fit' of an application with local needs and preferences. Members need to be aware of their obligation to an impartial approach. An objective consideration of material facts at the planning committee is the correct place for members to make their views, based on an impartial consideration of the evidence presented at the time. Expressing a view outside this arena comprises a prejudicial interest and debars a member from involvement in the determination

process. However, this does not rule out a range of opportunities for members to follow the progress of applications - particularly where contentious or substantial

Egan review

The Egan review 'Skills for Sustainable Communities' (ODPM 2004) stressed specifically the need for the government and local government associations to work together to address issues of propriety surrounding members' involvement in pre-planning and planning brief discussions. Opportunities for developing creative relationships, outlining local concerns and identifying areas for negotiation on substantial applications are areas where members have an important role to play. This process needs to take place however within a legitimate and robust framework, with a cautious awareness of the fine line between an objective interest and a prejudicial one.

The Egan findings highlighted the importance of members' involvement at this stage if they are to understand the way in which proposals have been shaped to meet the needs of the community.

The determination of planning application is a quasi-judicial process and when the boundaries between discussions and negotiations become blurred, members lay themselves open to criticisms of 'fettered discretion' and partiality.

"We believe that the government and the Local Government Association should work together to address issues of propriety surrounding members' involvement in pre-planning and planning brief discussions"

The Egan Review of Skills - p 13

Benefits of pre application discussions

The LGA's 2002 revised guide (probity in planning update) stressed the benefit of both parties engaging in pre application discussions. Developers and applicants are generally keen to ensure that their applications work their way through the system with the minimum need for additional information to be supplied.

Planning authorities will benefit from 'decision-ready' applications where time consuming delays caused by the need for clarification by either side can slow down the process. The Planning Inspectorate has noted that many applications that end in time consuming appeals could have been avoided by better policy communication at an early stage of the process.

Paragraph 56 in the Audit Commission's 'Building on quality' states:

"pre application work is discretionary, but if undertaken successfully will contribute to the quality of the process and shorten the time needed for formal consideration. It should be encouraged"

While much of the available guidance refers to the role of officers, members have a crucial role to play at this stage in offering vision and leadership and in setting out the vision and policy context for development.

Members' concerns

While discussions with officers at an early stage can iron out many of these problems, members however may feel constrained in meeting with applicants. There is a wariness that discussions may become, or be seen by objectors to become, a part of the lobbying process on the part of the applicant.

There are a wide range of approaches to pre-application and pre-decision discussions ranging from the attitude that 'any involvement of members in planning applications should only take place within committee' to the opportunity offered by some councils for pre application meetings where contentious or larger proposals may be explored and questioned in a presentation to senior members.

While many councils' codes of conduct specifically advise against pre application discussions between members and applicants, the LGA feels that, if conducted according to clearly communicated and well structured format, the discussions can be useful and effective ways to support the decision making process.

Guidance notes

The Human Rights Act requires a fair and impartial tribunal to determine the rights of

individuals. This applies to the work of councils' planning committees. If a balance is to be struck between impartiality and the wish to be seen as engaged, positive, open and transparent members need to exercise caution in engaging with applicants.

Any discussions with developers or applicants **should be part of structured arrangements agreed with officers**. Members should be aware of the distinction between giving and receiving information and engaging in negotiations in their discussions with applicants or their agents regarding planning applications, agreements or any other planning matters. As background to our guidance, we would urge councils to make, clarify and communicate the role of the members and the limits of engagement with applicants, to educate members in the protocols and to address these issues in a positive way in framing their local member codes of conduct. One mechanism for this might be in the form of a simple guide to applicants outlining the scope of pre application meetings and the remit of the members. In doing this, members may find it helpful to refer to the model code of conduct issued by the Office of the Prime Minister in November 2001.

We offer the following points to be noted in the development of local codes. Members should be aware of and be encouraged to observe them.

- Presentations by applicants should be limited to the development proposal and a question and answer session on factual matters. The understanding must be that the discussions are being held in order to improve understanding. Where appropriate such meetings may take place on site and incorporate a site visit.
- Members must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining the adopted local policies. Questions to clarify aspects of a proposal, or the expressions of policy concerns are legitimate as long as they do not develop into negotiations. It should be made clear at the outset of the meeting that discussions are not binding, and that views expressed are not part of the determination process. It should be made clear in prefatory remarks that any statements should be categorised as 'without prejudice'.
- To reinforce the above, at the start of the meeting officers will explain that it is taking

place at the request of the applicant and that he merits of the case will not be discussed. Members and officers will, of course, be free to ask questions about the proposal at of the presentation. If the applicant requests the views of the authority, these will be communicated subsequently and in writing. In such communication, officers will make it clear that any views expressed prior to formal determination of an application are preliminary.

- Advice and observations should be based on the adopted plan and material considerations
- A written note of the proceedings should be kept- to include a record of officer attendance and follow up
- Officers of appropriate seniority should attend and for major or contentious applications members' involvement should be authorised by the main committee. Their involvement should be recorded in any subsequent committee report.
- Follow up the meeting with a letter emphasising the informative nature of the meeting
- In discussions touching on issues of a commercially sensitive or confidential nature, councils will need to set out in advance how they intend to deal with these cases and how they sit with the drive for increased openness and transparency and the provisions of the Freedom of Information Act
- Members should not seek to influence officers or pressure their officers to support a particular course of action

As a footnote, there is nothing to stop an applicant from arranging any form of consultation independently of the council's own processes. In fact, this is to be encouraged - consultation could be anything from mail shots through to organising public meetings - and the council might appreciate this course of action where it has an interest in the land so that it can be clearly seen that there is a distinction between the interests of the landowner and planning authority and that these are demonstrably separate.

Lobbying

Pre application and pre decision discussions and discussions with lobbyists are not the same

Probity issues do not mean that members cannot take a view on applications and lobby on behalf of the best interest of their community. This is perfectly proper and a legitimate role for local democratic representatives and it is quite common for applicants to wish to discuss and seek the support from their councillor - for or against a proposed development - before a planning matter is decided. Lobbying is an integral part of the planning process and should not be denied to members. Both applicants and objectors should have access to their representatives.

However, such lobbying can, unless all parties exercise care and common sense, lead to the impartiality and integrity of a member being called into question. The credible determination of applications requires that members' approach should be objective after consideration of the facts provided and discussed during the committee meeting. A prejudicial interest rules a member out of the decision making process.

The earlier LGA guidance (*Probity on planning update 2000*) discussed at length the appropriate response to lobbying. It is worth reiterating the key points and emphasising a point repeated below - namely that members on the planning committee who have been lobbied and have agreed to openly advocate a particular course of action should not take part in any further consideration of the application.

When being lobbied, members - particularly members of the relevant planning committee - should:

- Take care about expressing an opinion which may be taken as indicating that they have already made up their mind on a decision before they have had the opportunity to consider all the relevant information, evidence arguments and views
- Adopt a listening role and restrict themselves to giving procedural advice, including suggesting to those lobbying that they should speak or write to the relevant officer in order that their opinions can be included in the officer's report
- Make it clear that they will only be in a position to make a final decision after having received the officer's report and heard all the relevant evidence, arguments and views at committee
- Members who do take an active stand in support or assistance to an application should not take part in, and should withdraw from the

planning committee deliberations. Responding to lobbying is fully legitimate where a councillor openly admits an interest in the outcome of deliberations and withdraws from the discussions on which they have a particularly strong view and stands down for the period while the item is under discussion

Where members are not being lobbied directly, but are attending separate public meetings where applications are being commented upon, eg a community group reviewing a proposal for development in their area, then they should follow this guidance as if they were being lobbied

Further considerations

With the emphasis on culture change arising from the Planning Act, members also need to review their approach to their engagement with the planning process. This will involve education and review of existing systems. Training for members, especially newly elected ones, should specifically address the value of and the caution that needs to be exercised to respect probity

As part of the pre application process, members should be briefed on significant applications well ahead of their determination. Officers should inform members of significant applications when they are registered. Many authorities already follow this model - picking up on applications that fall outside the delegation process and setting up steering groups on large applications to steer officers or smaller groups drawn from executive and planning committee. This gives officers an opportunity to highlight pivotal issues and areas for negotiation at a later stage. It is an opportunity for local concerns to be flagged up.

Members may also want to be aware that the Standards Board for England is expected to review the model code of conduct shortly. This review will provide an opportunity for the LGA and planning authorities to make an input to the statutory rules relating to the conduct of members, including those where members are involved in pre-application procedures

Best practice

Several councils have established mechanisms to promote 'front-loading' of applications - either at the stage of pre application or at the more sensitive stage of pre-decision

At **Cambridge City Council** 'development control forums' are held. These are held in public - to satisfy probity concerns - at the 'pre-decision' rather than the pre-application stage of the development control process but are intended to influence any negotiations between officers and the applicant. The applicant, ward members, members of the planning committee and members of the public are all involved in the forum to allow early discussion of the planning issues raised and to explore the scope for building consensus and resolving concerns. A leaflet is available detailing the procedures for early discussion of planning issues prior to the officers report to the planning committee. The leaflet covers the scope of the work of the Forum, who can attend and on what basis, together with contact details.

At **Harrow** a detailed protocol has been produced for members dealing with planning applications and lobbying. The protocol includes a requirement that councillors undergo compulsory training before sitting on the planning committee. Discussions with potential applicants are encouraged - but within the context of a forum prescribed for the purpose.

A practical example from **Bolton** illustrates how applications by developers on major/complex applications may be presented before they go to committee. Their code of practice says:


"In certain circumstances the decision-making function may be aided by the planning and highways committee receiving a presentation from applicants or potential applicants. To ensure that such presentations are seen in a positive way:

- planning and highways committee will decide whether a presentation should be received, and the chair of the committee on the day shall chair the presentation;
- should significant and potentially contentious matters be involved, the presentation should normally be open to the public and consideration given to publicity arrangements and whether third parties should be invited and given the right to address and right of reply. In exceptional circumstances the presentation may be made in private, and a written summary placed on the case file;
- council officers will start every presentation by outlining the basis of the presentation and that it is without prejudice to the eventual decision taken on the application submitted."

The **Quarry Products Association** notes that proposals for new or extended mineral extractions are invariably complex. However, much can be done to refine the initial draft proposals by way of pre-application discussions. The aim is to ensure both that the submitted proposals are likely to be acceptable and that the final determination period is not extended unnecessarily by frequent requests from the mineral planning authority for more details or revisions. For all such mineral applications, pre-application discussions are welcomed. Such discussions may involve not just the MPA but also statutory consultees such as the Environment Agency or English Nature. Discussions will sometimes result in modifications to the application boundary and will often result in refinement of proposals for environmental safeguards such as noise controls, lorry routing, after-use proposals and landscaping. The process also helps to weed out those cases which have such a limited prospect of permission that the operator resolves not to pursue a formal application.

Further reading

National Planning Forum good practice note
'Pre application discussions', best practice note 2
December 2004
Planning simplified (for councillors), LGIU 2004
Probity in planning, LGA 2002



For further information, please contact
the Local Government Association at:
Local Government House
Smith Square, London SW1P 3HZ

**or telephone LGconnect,
for all your LGA queries, on 020 7664 3131**
Fax 020 7664 3030
Email info@lga.gov.uk
Website www.lga.gov.uk

promoting better local government

LGA code F/301
Published and printed by LGA reprographics