

## **Positive Engagement: A guide for Councillors involved in making planning decisions – Good Practice Guidance Note**

### **Summary**

Councillors **can** involve themselves in discussions with developers, their constituents, and others about planning matters. Difficulties can be avoided if you follow these useful general hints.

#### **Do**

- involve officers and structure discussions with developers
- inform officers about any approaches made to you and seek advice
- familiarise yourself with the Code of Conduct and follow it when you are representing the Council
- keep your register of interests up to date
- be aware of what fairness and impartiality mean in your role
- be prepared to hold discussions with an applicant and officers before a planning application is made, not just after it has been submitted
- preface any discussion with disclaimers; keep a note of important meetings and calls; and make clear at the outset that discussions are not binding
- be aware of what Disclosable Pecuniary Interests, personal and prejudicial interests are – refer to the Monitoring Officer or the Code of Conduct if you are unsure
- recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- use meetings to show leadership and vision
- encourage positive outcomes
- recognise that you can lobby and campaign but that this may remove you from the decision making process
- feed in both your own and your local community's concerns and issues
- be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making.

#### **Do not**

- use your position improperly for personal gain or to advantage your friends or close associates

- meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a ‘friendly’ private discussion with a developer could cause others to mistrust your impartiality
- attend meetings or be involved in decision-making where you have a Disclosable Pecuniary Interest or a prejudicial interest – except when speaking where the general public are also allowed to do so
- accept gifts or hospitality
- prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal
- seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- compromise the impartiality of people who work for the Council
- invent local guides or policies

## Contents

SUMMARY.....	273
INTRODUCTION.....	276
1. The aim of this good practice guidance note: .....	276
2. Status of this good practice guidance note: .....	276
3. The key purpose of Planning:.....	276
4. Your role as a Member of the Planning Authority .....	276
5. When the Good Practice Guidance Note applies: .....	276
6. Relationship to the Members' Code of Conduct .....	276
7. Development Proposals and Interests under the Members' Code of Conduct .....	277
8. Fettering Discretion in the Planning Process. ....	277
9. Contact with Applicants, Developers and Objectors.....	278
10. Lobbying of Councillors .....	279
11. Lobbying by Councillors.....	280
12. Public Speaking at Meetings .....	280
13. Officers .....	280
14. Decision Making.....	280
15. Training.....	281
APPENDICES .....	281

## **Introduction**

### **1. The aim of this good practice guidance note:**

to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

### **2. Status of this good practice guidance note:**

it has been adopted by Hart District Council to give guidance to Members when dealing with planning matters. A failure on the part of any Member to act in accordance with this guidance note does not in itself mean that the Member has breached the Councillor Code of Conduct. This Good Practice Guidance Note will however, be taken into account in any assessment of any complaint into the conduct of a Member.

### **3. The key purpose of Planning:**

to manage development in the public interest.

### **4. Your role as a Member of the Planning Authority:**

to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.

### **5. When the Good Practice Guidance Note applies:**

it applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications.

If you have any doubts about the application of this good practice guidance note to your own circumstances you should seek advice early, from the Monitoring Officer preferably well before any meeting takes place.

## **6. Relationship to the Members' Code of Conduct**

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with.
- **Do** then apply the rules in this Good Practice Guidance Note, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Good Practice Guidance Note, you may not necessarily have breached the Members' Code of Conduct, but you may put the Council at risk of proceedings on the legality or maladministration of the related decision.

## **7. Development Proposals and Interests under the Members' Code of Conduct**

- **Do** disclose the existence and nature of your interest<sup>i</sup> at any relevant meeting. Preferably, disclose your interest at the beginning of the meeting and not just at the start of discussion on that particular matter<sup>38</sup>.
- **Do** then act accordingly. Where you have a Disclosable Pecuniary Interest or your interest is personal and prejudicial:
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Council.
  - **Don't** get involved in the processing of the application.
  - **Don't** 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 councillor. This would include, where you have a Disclosable Pecuniary Interest or a personal and prejudicial interest in a proposal, using your position to discuss that

proposal with officers or members when other members of the public would not have the same opportunity to do so.

8. **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal, the law place limitations on you in representing that proposal. You may address the Committee but only to make a presentation in the same manner than would apply to a normal member of the public, after which you must leave the room whilst the meeting considers it (you may not remain to observe the meeting's considerations on it from the public gallery.) You must not take part in any discussion or vote on the matter.

## 8. Fettering Discretion in the Planning Process.

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of Planning Committee (or Council) and of your hearing the officer's presentation and evidence and arguments on both sides.

You will **not** however, have fettered your discretion to have had (or to have appeared to have had) a closed mind when making the decision just because:

- you had previously done anything that directly or indirectly indicated what view you took, or would or might take, and
- the matter was relevant to the decision.
- **Don't** speak and vote on a proposal where you have fettered your discretion. You do not have to withdraw, but you may prefer to do so for the sake of appearances.

## 9. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural, or technical advice to officers.

- **Don't** agree to any informal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, it is preferable that you do not seek to arrange that meeting yourself but request the Development Management & Building Control Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Council to any particular course of action, and also ensure that the meeting is properly recorded.
  
- **Do** otherwise:
  - follow the rules on lobbying; and
  - consider whether or not it would be prudent in the circumstances to make notes when contacted;
  - In addition in respect of presentations by applicants/developers
  
- **Do** attend any open public planning presentations organised by developers.
  
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
  
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application.
  
- **Do** be aware that a presentation is a form of lobbying and you should avoid expressing strong views or state how you or other Members might vote.

## 10. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or set out such a firm point of view that it amounts to the same thing.

- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group, or locality.
  
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register of interests where its value is over £25.
  
- **Do** copy or pass on any lobbying correspondence you receive to the Development Management & Building Control Manager at the earliest opportunity.
  
- **Do** promptly refer to the Development Management & Building Control Manager any offers made to you of planning gain or constraint of development, through a proposed S106 Planning Obligation or otherwise.
  
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
  
- **Do** note that, unless you have a Disclosable Pecuniary Interest, or a personal and prejudicial interest, you will not have fettered your discretion or breached this Good Practice Guidance Note through:
  - listening or receiving viewpoints from residents or other interested parties;
  
  - making comments to residents, interested parties, other Members, or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  
  - seeking information through appropriate channels;
  
  - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the



meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate; or

- having campaigned for or against a planning application so long as you go into the meeting with an open mind to hear all the facts and evidence.

## **11. Lobbying by Councillors**

- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any application at any sort of political group meeting or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

## **12. Public Speaking at Meetings**

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

## **13. Officers**

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Management & Building Control Manager, which may be incorporated into any committee report).

- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

#### 14. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with the law and make decisions in accordance with the Development Plan unless material planning considerations indicate otherwise.
- **Do** not allow non-material planning considerations to influence your decision or to be used as a reason to take a particular course of action.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer an application.
- **Don't** vote on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be

recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## 15. Training

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended appropriate planning training.
- **Do** try to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan.
- **Do** participate in any review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

## APPENDICES

- Appendix A Scheme of Delegation – powers granted by the Council to the Executive Director - Place to determine Planning Applications
- Appendix B General principles of operation within the scheme of Delegation
- Appendix C Material and non-Material Planning Considerations
- Appendix D Determining Planning Applications
- Appendix E Decisions contrary to Officer Recommendations and subsequent Appeals
- Appendix F Officer Reports to Committee
- Appendix G Protocol to be followed when Committee is minded to refuse permission contrary to Officer Advice.

**Powers granted by the Council to the Executive Director - Place to deal with Planning Matters (December 2013)**

- 1 To determine or decline to determine all applications made, deemed to be made or referred to the Council under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and any statutory instruments made under those Acts, together with applications for certificates of Appropriate Alternative Development, together with determinations that it is not expedient to take enforcement action except an application where
  - 1a
    - a. within four weeks of its registration by the Council, or
    - b. within five working days of being notified that it is intended to grant permission where more than 5 letters of objection from independent sources (including the parish/town council) have been received (within the 21 day published notification period) each raising substantive material planning objections, that cannot be overcome by reasonable amendment to the application or by the imposition of planning conditions.
  - any one of the local Ward Councillors (or in the absence of a local Ward Councillor another previously nominated District Councillor) requests in writing to the Executive Director - Place, giving relevant substantive material planning reasons, that the application be determined by the Planning Committee and the referral is agreed by the Chairman of the Committee
  - 1b The Executive Director - Place considers that the application/notice/order should be considered by Committee
  - 1c The approval of the application would represent a material departure from the policies of the statutory development plan
  - 1d The proposal involves the District Council as applicant or landowner or as interested party
  - 1e Submitted by (including acting as an agent) or on behalf of a District Councillor (or their spouse or partner or immediate family) or where a District Councillor lives in the adjoining property, a property opposite the application site or a property either side

- 1f The applicant or agent is an officer who is a Member of the Council's Management Team, a Service Unit Head, or a member of staff within Place or any member of staff within the Authority who could be seen as having a direct input to, and therefore influence on, application decisions
- 1g Where an officer who is a Member of the Council's Management Team, a Service Unit Head, or a member of staff within Place or any member of staff within the Authority who could be seen as having a direct input to, and therefore influence on, application decisions, lives in the adjoining property, a property opposite the application site or a property either side.
- 2 Power to determine applications under Section 106BA of the Town and Country Planning Act 1990 (as amended), in respect of the modification or discharge of affordable housing requirements, following consultation with the Ward Members in which the application site lies.
- 3 Power to enter into Heritage Partnership Agreements under Section 26A of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended) where there are no direct or indirect financial obligations on the Council which have not been previously agreed by Cabinet.
- 4 Power to determine applications for a Certificate of Lawfulness of proposed works under the section 26H of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended).
- 5 To determine any notifications or application for prior approval in relation to permitted development proposals submitted in accordance with any Planning or associated Acts, Regulations or Orders

## **Appendix B**

### **General Principles of operation within the delegated scheme**

- A. The role of Planning Committee is to determine major or more complex applications that raise issues of more than immediate local importance. The intention is to allow councillors to focus on applications needing additional scrutiny where added member value in balancing conflicting pressures is important. This does not necessarily preclude consideration by the Committee of more minor applications provided that they raise issues of more than local importance.
- B. Householder or very minor applications should not normally be presented to a committee as they generally raise issues of only local impact. It is expected that members will work through any issues arising from the proposal with the Case Officer managing that process and with the involvement of applicant or agents as appropriate.
- C. Planning applications should normally only be referred to the Planning Committee where a matter of fundamental principle or precedent is identified which shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan and where the Local Ward Member can demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee.
- D. Referral to the Planning Committee should not be used as a means to arbitrate between competing interest groups or to put off making difficult decisions. Applications will also not normally be referred to Planning Committee simply to allow an objector/applicant an opportunity to air their views in a public forum
- E. Referral to Planning Committee should also not be used as a means to change the outcome of any decision on a planning application.

### **Process**

- 1 All members are notified by email of individual applications within their wards.
- 2 Members are encouraged to view the plans on-line via the internet. Members are also encouraged to contact the Case Officer if there are any queries or if they want to discuss issues of principle or detail.

- 3 Officers are encouraged to contact members where they feel that the matter may be contentious, and this should be done as soon in the process as possible.
- 4 Where an application is required to be referred to a local Ward Member(s) the Ward Member(s) will be sent a copy of the report.
- 5 A 5 working day turnaround for responses will be strictly applied.
- 6 If the Ward Member(s) disagrees with the Officer's recommendation to grant planning permission, they should advise the Case Officer in writing clearly stated material planning issues that give them concern. In seeking to have the application referred to Planning Committee the Ward Member(s) must demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee. This should be done as soon in the process as possible but must be within the 5 working day turnaround.
- 7 The Case Officer will then send the report to the Chairman of the Planning Committee with a risk assessment if necessary. Should the Chairman of the Planning Committee agree with the Case Officer rather than the Ward Member(s) then the Chairman should seek to notify the Ward Member(s) to explain their reasons prior to making any final decision as whether the application should be decided under delegated powers and not referred to the Planning Committee for decision.
- 8 If in any instances a Ward Member(s) wishes any application to be considered by the Planning Committee, they should advise the Case Officer in writing with clearly stated planning issues that give them concern. The Ward Member must also demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee. This should be done as soon in the process as possible and in any event must be done within 28 days of first being notified of the receipt of the planning application.
- 9 Where the request by a Ward Member for an application to be considered by the Planning Committee is agreed by the Chairman of the Planning Committee, the reason given by the Ward Member should be included in the report.
- 10 If a scheme is capable of minor revision to overcome the members concerns (such as the addition of a condition or reasonable amendment to the development) the Case Officer will seek to achieve such revisions with the applicant, provided it can be achieved within the deadline for decision.

- 11 Where Members have spoken to the Officers they must exercise care not to go on public record with their views of a planning application, as this may mean that they are excluded from the process later on.
- 12 Parish councils have an enhanced role in the process of determining planning application under the Council's adopted scheme of delegation. The process nevertheless allows the determination of the application to be contrary to the views of parish councils without the applications being automatically referred to the Planning Committee. Parish councils will be encouraged to "qualify" their comments and thus the basis on which an objection is raised can be made clear. Parish council comments are important as they are based on a wealth and depth of local knowledge, which can benefit the consideration of the application. Nonetheless the parishes, whilst important parties to the process, are one of a wide range of consultees and their comments should not be given additional weight purely because they are made by a parish council. Therefore, simply because a parish council has raised objections to a development will not in itself be sufficient grounds to refer a planning application to Planning Committee. The substance of any comments rather than its source is the more important issue.
- 13 Where a decision is made that is contrary to the view of the parish council the Case Officer will write to the parish council and explain the reasons for taking a contrary view. A copy of the Case Officer's report may be sufficient in these circumstances.



### Material and Non-Material Planning Considerations

- A. The planning presumption is that planning permission will always be granted unless the development would give rise to a material harm to a matter of public planning interest.
- B. Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. They must also fairly and reasonably relate to the application concerned. The Courts are the arbiters of what constitutes a material consideration. All the fundamental factors involved in land-use planning are included, such as:
- the number,
  - size,
  - layout,
  - siting,
  - design,
  - external appearance of buildings
  - the proposed means of access,
  - landscaping,
  - impact on the neighbourhood, and
  - the availability or lack of infrastructure (provided that there is substantive evidence to support such a claim) – this does not however apply to infrastructure that is delivered by statutory utility companies e.g. sewage, water supply, electricity, gas, telephone etc.
- C. Matters that should **not** be taken into account include:
- loss of property value
  - loss of view
  - land and boundary disputes
  - matters covered by leases or covenants
  - the impact of construction work
  - property maintenance issues
  - need for development (save in certain defined circumstances)
  - the identity or personal characteristics of the applicant
  - ownership of land or rights of way
  - competition between firms and uses

- change to previous scheme – each application must be determined on its own particular merits
- moral objections to development such as amusement arcades or betting shops
- that the work or change in use may have been carried out in advance without planning permission – the essential test is not that the works have been carried out but whether those works in themselves have caused a planning harm to a matter of public interest
- the weight of public opposition or support – it is not the number of public representations made that is relevant but rather the material planning issues raised that is important
- personal preferences – applications have to be determined on the basis as submitted by the applicant. Changes should only be made where there are overriding material planning objections
- matters that are dealt with by other legislation, such as the Building Regulations (e.g. structural safety, fire risks, means of escape in the event of fire etc). - The fact that a development may conflict with other legislation is not a reason to refuse planning permission or defer a decision. It is the applicant's responsibility to ensure compliance with all relevant legislation

D. Government statements of planning policy are material considerations that must be taken into account in deciding planning applications. These statements cannot make irrelevant any matter that is a material consideration in a particular case. Nevertheless, where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them.

E. In those cases where the development plan is not relevant, for example because there are no relevant policies, the planning application should be determined on its merits in the light of all the material considerations.

### **A Positive Approach to Sustainable Development**

When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social, and environmental conditions in the area. This means that any discussions with applicants and developers at both pre-application and application stage will be positively framed as both parties work together to find solutions to problems. This does not necessarily mean however, that development that is unacceptable in principle or which causes harm to an interest of acknowledged importance, will be allowed.

The Local Plan is the starting point for decision making. Proposals that accord with the Local Plan will be approved without delay. Development that conflicts with the Local Plan will be refused unless other material considerations<sup>ii</sup> indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision, the Council will seek to grant permission unless material considerations indicate otherwise – taking into account whether:

1. Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Local Plan taken as a whole; or
2. Specific policies in the Local Plan indicate that development should be restricted.

The Council will grant planning permission where we are satisfied that it will achieve a positive outcome that meets a recognised planning purpose.

Unsatisfactory applications will, however, be refused without discussion where:

1. The proposal is unacceptable in principle and there are no clear material considerations that indicate otherwise; or

2. A completely new design would be needed to overcome objections; or
3. Clear pre-application advice has been given, but the applicant has not followed that advice; or
4. No pre-application advice has been sought.

### **Decisions contrary to Officer Recommendations and subsequent Appeals**

1. In determining planning applications, the Planning Committee is entitled to decide the weight to be attached to the various planning criteria that are relevant to the application. This may lead to a decision contrary to the recommendation of the officers.
2. In these circumstances, it is essential that the reasons for the decision are clear in the minds of the Committee members. It is often possible for the Committee to be clear about the reasons for refusal and to set these out in detail when the application is first considered. Sometimes it may be necessary to defer an application for a further report to enable detailed reasons to be framed and considered. In terms of decisions to grant permission contrary to office advice, the Committee may be happy for these to be left with the Officers or in some cases for subsequent agreement with the Chairman or Vice-Chairman of the Planning Committee.
3. Where the Planning Committee wish to refuse an application contrary to an Officer recommendation the reasons for refusal should be clearly stated and a detailed minute of the decision should be made.
4. Where the Planning Committee wish to grant planning permission contrary to an Officer recommendation a detailed minute of the Committee's reasons will be made. Committee should indicate whether there are any specific conditions that it wishes to see imposed.
5. The drafting of appropriate conditions, including any specifically identified by Committee, will normally be delegated to the Executive Director - Place, unless the Committee indicate otherwise.
6. Where Members wish to add extra planning conditions or delete recommended conditions, a detailed minute of the reasons for the Committee's action should be made.
7. In the cases of decisions made contrary to Officer recommendation, the Officer attending the meeting should first be given the opportunity to explain the implications of the decision before any final decision is made.

## **Appeals against decisions contrary to the Officer's Recommendations**

1. Where an appeal to the Secretary of State is subsequently lodged against a decision made contrary to the Officer's recommendation, Planning Officers (and other Officers as appropriate) will normally act as professional witness to present the Council's case at public inquiries and local hearings unless the Executive Director - Place considers that this would prejudice the outcome<sup>39</sup>
2. In those circumstances the Executive Director - Place may ask Members to conduct the appeal. The Planning Committee will therefore need to be prepared to identify a Councillor(s) to support the case at a public inquiry or local hearing. This would normally be the Councillors who proposed and seconded the reasons for refusal. This is clearly of considerable importance in stressing to a planning inspector the strength of Members' views and the reasoning behind them. The Executive Director - Place and their team will do all that can be done to help Members prepare a case.

**Officer Reports to Committee**

The courts and Ombudsman advice have determined officer reports on planning applications must have regard to the following points:

- reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted;
- relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations;
- reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur;
- reports should contain technical appraisals which clearly justify a recommendation;
- if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004.

### **Procedure to be followed if Committee is minded to refuse permission contract to Officer Advice.**

It may be that, given the concerns raised by the Committee, the applicant may be willing to amend the application to find an acceptable solution, and that a refusal can be avoided. Conversely, it may be that the applicant is not willing to amend the application (further) and a refusal will be the appropriate decision. Sometimes applicants are only willing to amend an application when the democratic will of the Committee has been expressed.

If Committee is minded to refuse permission contrary to Officer recommendation (and the objection is on a point of principle in terms of local plan policy and Officer advice is that there is no prospect of compromise) the following procedures should be followed:

1. The Committee will express its particular concerns with the application as submitted, where possible setting out as precisely as possible those areas. These would represent the proposed reasons for refusal.
2. However, rather than formally refusing the application the formal decision would be in an A/B form. The "A" would be to defer the application to seek amended plans to deal with the issues identified, with, depending on the Committee's desire, either the return of the application to a subsequent meeting of the Committee, or the matter being delegated to the Executive Director - Place to grant planning permission, possibly following consultation with the Chairman of the Committee and the Ward Member on the Committee. The "B" would be, if amended plans were not received, that the application would be refused for the reasons stated.
3. In the "B" scenario an informative could then be added to the decision notice that the Committee had considered it, the issues had been identified but that the applicant had declined to amend the application. As such the Council could demonstrate that it had sought to engage with the applicant to seek a solution but that engagement had not resulted in a satisfactory solution.