

GUIDANCE ON PROPRIETY ISSUES IN THE HANDLING OF PLANNING CASEWORK IN THE NATIONAL ASSEMBLY FOR WALES:

CODE OF CONDUCT FOR MEMBERS OF THE PLANNING DECISION PANEL

1. This note provides advice on the propriety issues that arise when carrying out of the Assembly's functions under the Town and Country Planning Acts and the Transport and Works Act 1992 that have been delegated to Planning Decision Committees. Members of the Planning Decision Panel are required by Standing Order 27 to agree to be bound by this Code of Conduct as a condition of serving on a Planning Decision Committee. A separate Code of Conduct applies to Assembly Members and governs their relationship with the members of Planning Decision Committees.
2. The objective is to ensure that every decision is properly taken and to avoid the risk of a successful legal challenge. ***Our aim is to ensure that the parties involved in planning cases are dealt with fairly, justly and openly; that all the evidence is fully considered and that decisions are based only on material planning considerations to which all the parties have had access.*** The law protects these principles and decisions can be challenged in the Courts if they are not followed.
3. Planning decisions must therefore be taken in line with the principles of natural justice. This means that all the parties to a planning case which is to be determined by the Assembly have the right to present their case to it, and to see and comment on those of the other parties. ***The decision must not be based on any other evidence (including private representations), except published policies of the Assembly, which can be taken as being known to the parties.*** Members of a Planning Decision Committee must avoid giving any cause for suspicion that such private representations have been made and taken into account. ***If, during the process of reaching a decision, new evidence is produced which would affect the way the decision might be taken, it must be shared with the parties for them to comment on if they wish.*** Any departure from these principles will leave the decision open to legal challenge.

The Planning Decision Committee

4. The Planning Decision Committees will determine 'recovered' planning appeals, planning applications that have been 'called in' for the Assembly, rather than the local planning authority, to determine and applications for Orders under the Transport and Works Act 1992. Decisions taken by the Assembly under the Town and Country Planning and other Acts are legally the responsibility of the Assembly as a whole.

5. Members of a Planning decision Committee must:

- *act, and be seen to act, fairly and even handedly, by bringing an unbiased, properly directed and independent mind to their consideration of the matter, and;*
- *in order to demonstrate even-handedness, and in the interests of natural justice, see that all evidence which is material to a decision, and which is taken into account, has been made available to all parties with an interest in the decision.*

6. It follows that:

- ***A member of the Planning Decision Panel should not take part in a planning decision in which he or she has, or might be perceived as having, a private, constituency or electoral region interest.*** That includes decisions in respect of matters with which he or she has previously been associated - as an Assembly Member, an MP or member of a local authority, or in a private capacity. Nor should he or she do anything to influence the decision, other than make representations on behalf of his or her constituents.
- ***Because of this requirement, a member may not take decisions on planning cases within his or her constituency or electoral region or those directly affecting his or her constituency or electoral region.***
- ***A member of a Planning Decision Committee should not discuss a case with any interested party.*** They should therefore decline requests for meetings with other Assembly Members, MPs, delegations of local people, parties to the appeal or application, pressure groups or any other party who wish to make representations about the case. The same principle applies to other forms of contact with interested parties, including telephone calls.

7. Members of the Planning Decision Panel should avoid commenting on any planning application, or matter that might become the subject of a planning application, in case they might be considered to have pre-judged the matter if it subsequently came before

the Assembly. If that were the case, the member could not take part in making the decision. Members may make representations on cases in their constituencies (see paragraph 11) as they cannot take part in making those decisions.

8. Members of a Planning Decision Committee must not consider any policies other than those of the Assembly or, where they are a material consideration, those of the Government, in reaching their decision. ***If a member of the Planning Decision Panel has made, or is associated with, other policy statements that are relevant to a particular case, he or she might be considered to have pre-judged the issue in that respect and could not take part in making the decision.***

9. ***Panel members must not use their position on the Panel to attempt to influence the decision of a Planning Decision Committee of which they are not members.***

10. As part of his or her wider Assembly duties, a member of the Planning Decision Panel may need to attend meetings where development projects are described and visit sites where development is planned. This might lead to a successful challenge if the matter came before a Planning decision Committee and it could be shown, for example, that the member had pre-judged the issues or had not approached it with an open mind, or acted procedurally unfairly by giving the developer an opportunity to put forward his case which had not been available to the other parties. The degree of risk depends on the stage a project has reached.

- It is at its lowest when the project is only in a formative stage, well before any application for planning permission has been made. However, a risk remains and when meetings or visits are being arranged, care should be taken to make clear the capacity in which the member is attending. *The member must avoid expressing any views on the planning merits of the scheme, which might be seen as prejudicing the determination of any subsequent planning decision.*
- Once a planning application has been made to the local planning authority and is under consideration, the case moves closer to the point where the member could become involved (if the application becomes the subject of an appeal). Care should be taken to avoid any action that might be seen to prejudice the determination of a subsequent planning decision. *Requests for meetings between the member and interested parties should be refused.* Such meetings are unlikely to serve a useful purpose as the particular planning case cannot be discussed. Where a meeting is unavoidable (for example because other matters are to be discussed in which the member has an interest), *care must be taken not to discuss the merits of the planning application.*
- When a case comes before the Assembly for decision there is a much greater risk of legal challenge if meetings between the member and the parties to the

proposal are held. *Visits or meetings should be avoided if at all possible. Where a meeting is unavoidable (as above) great care should be taken to avoid discussing the planning case and if possible this should be recorded. In these circumstances the member should not take part in the subsequent decision and should make it clear to the parties that he or she will not do so.* Care must also be taken in cases where an appeal is being determined by a Planning Inspector even though that will not subsequently come before the Assembly directly.

Constituency Interests

11. As members of the Assembly with constituency responsibilities, members of the Planning Decision Panel may want to express their views, or those of their constituents, to a local planning authority, or to a Planning Inspector about a case in their constituency.

12. Members are free to make representations about a planning application in their constituency to the local planning authority that is considering it. They may also similarly make representations to the Planning Inspectorate where an appeal will be decided by a Planning Inspector. Representations may also be made to the Inspectorate where an application has been called in or an appeal recovered, for the Assembly to determine; *but before the inquiry conducted by the Planning Inspector has closed.* All such representations must be made openly and on the basis that they will be made available to all interested parties. *It must be made clear that the member is acting on behalf of his constituents, or that the views expressed are his or her own personal opinion and not in any way an Assembly view. The member can take no part in the decision (if it is, or becomes one for the Planning Decision Committee to decide) and he or she must also make it clear that they will not do so, and that they will have no special influence on the outcome.*

Post decision representations

13. Once a decision on a planning appeal or application has been made, it is final and the Assembly has no further jurisdiction in the matter - unless the decision is overturned in the Courts. ***Planning Decision Panel members should not comment on it or discuss it afterwards. It is particularly important that they do not say or do anything that could prejudice the Assembly's position in the period (usually six weeks) that a decision may be subject to legal challenge or, if a challenge is initiated within that period, during the further period before the case is concluded.***