

DEFENDING PLANNING DECISIONS MADE CONTRARY TO OFFICER RECOMMENDATION

Introduction

1. Decisions made by members of the Planning Committee are informed by reports prepared by officers. The reports set out the professional views of planning officers in respect of the material planning considerations and relevant planning policy, and conclude by making a recommendation to committee.
2. Members are expected to pay very careful heed to professional advice from officers but ultimately must reach their own decision. In doing so, it is important that the Committee clearly articulates its reasons and that these are based on material planning considerations.
3. Officers will respect decisions made by the Planning Committee and they will do their best to support them if an appeal is lodged.
4. There are, however, some difficulties for officers in defending appeals made against their advice. There are several pieces of guidance for officers faced with having to defend an appeal at hearing or inquiry where the decision is contrary to their professional opinion.
5. The RTPI is the governing body for professional planners, and they have a Code of Professional Conduct which at paragraph 3 states that

“Members [of the RTPI] shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinion and shall not knowingly enter into any contract or agreement which requires them to do so.”

6. As well as being governed by the Code of Professional Conduct, professional planners are guided by Practice Advice Notes (PAN), and PAN 4 specifically refers to planners at inquiries. It states:

“Clearly the planner whose bona fide professional opinion is not in conformity with the case the evidence is supposed to support, is unlikely to be the best witness in such a case. It will be for those responsible for the conduct of the case to judge. The planner should ensure that whoever is so responsible is aware beforehand of the difference of opinion that may be revealed at the inquiry if the planner is called as a witness.”

7. The purpose of this note is to set out a procedure to allow members and officers to work together effectively to defend planning committee decisions made contrary to officer recommendations.

Making the decision

8. Whilst the Planning Committee is entitled to make decisions contrary to officer recommendation, they should only do so on defensible grounds. They should also ensure that the basis of the decision is as robust as it can be, as this will strengthen the Council's position on appeal. Failure to give adequate reasons can also form the basis of a judicial review challenge. Guidance from the planning Inspectorate states:

“The reasons for refusal should be clear and comprehensive and if the elected members’ decision differs from that recommended by their planning officers it is essential that their reasons for doing so are similarly clear and comprehensive.”

9. If there is a proposal by a member of the Planning Committee to determine an application contrary to the officer recommendation, the Chairman will ensure that the proposal includes reasons based on material planning considerations. If necessary he will seek advice from officers. In some cases it may be appropriate to call a short adjournment to enable a proposal to be drafted, with officer support as needed.
10. In some cases, it may be prudent to defer consideration of the application to allow for further officer advice. This may particularly be the case if it proves difficult to propose a decision with adequate reasons.

Defending appeals – questionnaire and statement of case

11. There are 3 procedures that an appeal can follow: written representations, a hearing or an inquiry.
12. In relation to all three procedures, officers will take responsibility for submitting the appeal questionnaire, the statement of case and any other documentation needed. However, it is important that these represent fully and accurately the basis of the decision made by members. This will be simpler to achieve if the decision, with reasons, is clearly set out in the minutes. Planning Inspectorate guidance states:

“The local planning authority’s reasons for refusal should be clear and, where the Committee’s decision goes against the planning officer’s recommendation, it is good practice for the reasons for this to be stated clearly in the Committee minutes.”

(Recent case law suggests that this is more than “good practice” and is a legal requirement, other than where reasons can be inferred from the officer report.)

13. Officers will send copies of the questionnaire and statement of case in draft to the Chairman of the Committee and to the proposer and seconder of the motion to refuse for comment. The Chairman may suggest that comments are sought from other members.
14. Officers will provide advice and support towards making the best possible case in setting out the basis for the Committee’s decision.

Defending appeals – representation at hearings

15. Clearly, this is not an issue when appeals are determined by written representations.
16. If an appeal is to be determined by way of an informal hearing, the Assistant Director - Planning will consider whether a planning officer can present the Authority’s case. If the planning officer is unable to speak with conviction and in support of the decision made by Members, alternative approaches will be discussed with the Chairman of the Planning Committee. In some cases, it may be practical to appoint a planning consultant to present the Council’s case. In other cases it may be appropriate for a member or members to present the Council’s case. This role could be taken by the Chairman of the Committee or by a member who proposed or seconded the motion. The nature of informal hearings is such that it will rarely be appropriate to appoint a legally qualified advocate to present the Council’s case.
17. If members are to present the Council’s case, officers will give them all reasonable assistance. Prior to the date of the hearing, officers will arrange a meeting with the members involved to

offer guidance and support, go through the planning application in detail and answer any queries or concerns that Members may have. At the hearing itself, Members will be accompanied by either a planning officer or a planning consultant. Officer support will relate to procedural matters and to resisting any application for costs, with advice to members on technical and policy matters if the need arises. Officers will not give evidence on the merits of the case. Officers will also accompany members on any site visit that the Inspector may wish to make.

18. If an appeal is to be determined at a public inquiry, the Council will generally have legal representation. However, for reasons explained, it may be difficult for officers to give evidence on planning merits where the decision is against their recommendation. Again, the options are calling a planning consultant to give evidence or calling the Chairman or other members. The Chairman will be consulted on the approach to be taken.
19. If members are to be called as witnesses, officers will give them all reasonable support. Officers will arrange a meeting with the members involved to offer guidance and support, go through the planning application and inquiry procedure in detail and answer any queries or concerns that Members may have. At the hearing itself, members will be accompanied by a planning officer.

Defending appeals in difficult cases

20. Whilst officers fully respect the role and responsibility of elected members in the decision making process, there may be occasions on which the prospects of success are so bleak that the better course would be not to defend an appeal. The costs of defending an appeal can be substantial, and members and officers need to pay heed to the risk of an adverse award of costs.
21. The Planning Inspectorate has published detailed guidance on when an award of costs against a local authority may be appropriate. Examples given include:
 - *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
 - *failure to produce evidence to substantiate each reason for refusal on appeal*
 - *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*
22. If officers' professional view is that appeals should not be defended, whether by reason of potential costs or otherwise, they are obliged to give their professional advice and recommendation, and the Planning Committee would be invited to make a decision. If calling a special meeting is impractical, it may be necessary to use urgency procedures, after consulting the Chairman and, ideally, all Planning Committee members. It is likely that reports to members in these circumstances would be taken as "Part 2" items, and that any consultation would be on a confidential basis, to avoid prejudicing the Council's position.
23. This issue is not necessarily confined to occasions on which members have made a determination against officer advice.
24. There will be occasions on which it will be necessary for the Council to adapt the position it has taken when decisions have been appealed; for example, when a developer has taken steps to address satisfactorily an objection raised by the Council. In such cases, where the planning decision was taken by members, the principle in paragraph 22 will be followed, unless time

constraints mean that member consultation is not practical. In such cases a decision may be made by the Director of Public Services or the Assistant Director, Planning, and then reported to members.

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