

## APPENDIX 1

### Note from Cllr Fairhurst

Dear Ben, At yesterday's meeting of the Planning Committees Working Group, we were requested to commit to writing our thoughts on the amended wording regarding compulsory training.

The proposal was to replace the current wording:

Officers will arrange training on planning issues. All members of the Council will be invited to attend. All members of the Planning Committee should attend.

With the following wording:

Officers will arrange an annual mandatory training session for Councillors who are members or substitute members of Planning Committee. This training must be undertaken before participating in decision making at Planning Committee. All members of the Council who are not on Planning Committee or a substitute member of planning committee will be invited to attend on a voluntary basis.

And this raises a number of issues that ought, at least to be, at least, debated and fully understood before changes are approved.

Perhaps most obviously, it suggests that training is causal to the quality of the decisions and to the "performance" of the Planning Committee.

#### The value of Training

As was evident at our meeting, all members wholeheartedly agreed that regular training is essential for a member to adequately assess all variables in their decision and to arrive at a dependable decision. It was even suggested that a single "basic session" annually might not be sufficient and that in a case where, for example, the NPPF had been amended, a more frequent training programme was more appropriate.

I believe that it was agreed at the meeting that members on the committee have an obligation to discharge their duty in a well considered and well informed way and that if they lacked the necessary training (and indeed attitude) this would be to the detriment of the whole committee. But it was the opinion of all members at the meeting that members were both mindful of this obligation and were willing to prepare adequately for this undertaking.

Another issue raised by the proposed new wording would be to impose a "mandatory" obligation on all current and future members of the committee to attend these training sessions. This would change the existing requirement from a "should attend" to a "must attend" obligation.

It is this issue that I raised as a major change and one that comes with a number of extra considerations.

Although one might argue that the better informed and trained the members are the better the quality of their decision might be, of course this is not a guarantee. But before this amendment the legal "competence" was founded exclusively on their election by the resident and a subsequent appointment and delegation to the committee by the full council. This is a profound competence and soundly based on democratic principles. We choose our representatives to hear and decide planning applications.

However if the council chooses to raise the bar of qualification to attend the planning committee it effectively reduces the democratic element of competence and demands a level (quite hard to prove and open to subjective assessment) of academic competence before being able to attend planning committee.

This has several interesting implications apart from the value of democratic representation.

### Legal Competence

Practically, when a new member is elected without any “training” at all, how long does it take to be “competent” to fulfil their obligations as councillor on the Planning committee and who is the arbiter or judge of this competence? It may even be argued that this places a burden on the council to adequately train and “lead” the competence. Anecdotally, I have learned a substantial amount about Planning over the last 7 years and continue to do so. Even after my own post graduate training and the training provided by the council, there is still much to be learned. Does this imply that all decisions that I’ve taken, especially those taken seven years ago are inferior, perhaps even legally “incompetent”, through lack of training? Do we need to impose a means of testing “competence” to ensure a “basic” level of understanding or are we in fact imposing an arduous extra step just to pay lip service to the Planning Authority or the public? Surely, without testing, all training is simply providing the information to members that they may “attend” or understand. Members are drawn from varied backgrounds. Some of us have many years in academe or in professional practice, others work in entirely different fields. Are we to consider this when appointing members to the committee?

### Risk

A more serious issue is that each decision taken under this new regime would then have an added risk at appeal. Each member would need to be shown to have attended all and “adequate” training, in order for their vote to be “competent”.

Certainly if I was an aggrieved developer with an application refused by a single vote, I would look to the competence of each refusing vote against a constitution that required mandatory training for competence. I might even look to the quality of the training and argue that it was not adequate and failed to explain a salient issue in the application. There is no doubt that the symmetry between legal representation at appeals always favours the Applicant with “deeper pockets”.

Yet the current status is that our legal competence derives from our election to the council. The planning system does not demand that we become planning specialist. Only that we apply our best judgement, taking into account all evidence policy and advice in weighing benefits and harms and arriving at a conclusion. It is to our advantage to attend training and acquaint ourselves fully with all laws, policies and issues pertaining to our decision. But this should determine our “competence”.

Other issues worth mentioning are;

By severely limiting competence to attend, we might find insufficient members for a particular meeting particularly after an election,

and

In light of our current “designated” status, this change may be interpreted to be an admission that our under-performance is as a result of insufficient training and therefore an “incompetent” committee.

I would strongly suggest that instead of restricting the competence of members by making training mandatory and excluding those who have not attended, we simply clarify our commitment to the benefits of training and increase the amount and regularity of training sessions.

#### **Email from Cllr Loughlin dated Friday 18/02/2022 18.26**

I have given this subject a great deal of thought, not only before yesterday’s meeting but also since.

Councillors are transitory and are subject to the whims of the electorate; The council’s constitution, however, may remain in place for some years. Making training mandatory and part of the council’s constitution is, I believe, counter productive.

Not all councillors want to be a part of the planning committee, not only because of the time spent at site visits, meetings, etc., but also because some worry about the rules and regulations that the committee are expected to adhere to sometimes to the detriment of their constituents whom they are unable to represent on occasions for fear of contravening the rules of pre-determination, probity, etc. Adding an ‘edict’ that training is mandatory and is liable to a penalty, such as not being able to sit on the committee if the mandatory training is not attended is going to put even more people off. (It sounds like a threat).

I have always believed that training is imperative, especially on regulatory committees where the threat of judicial review is always present. The committee has had some excellent training from officers and the PAS in the past and I like to think that members are intelligent enough to email officers for information or advice should they need to do so. They may also look on line or elsewhere for any information they wish to find out. I have done this on many occasions. The NPPF is on line, The Localism Act is on line and there is much more. Sometimes there is guidance from the government and planning lawyers. Some time ago we were told we were in breach of Wednesbury. I had no clue what that was until I looked it up on line (Wednesbury unreasonableness) We went against officer advice and on that occasion won at appeal. I have always remembered it.

There will be an election next year; in all probability the make up of the committee/council will change. I don’t think we should put new members off of joining the planning committee by making training mandatory with dire consequences if they don’t attend which could frighten them off. At the time of the next election we may still be under designation, a daunting prospect for any new member. Regular training sessions will not only keep the committee up to date which an annual training session won’t is, I believe, the best solution.

As I said yesterday saying members are 'expected to undertake training' is not only self-explanatory it is less like an order.

Have a good weekend,

Janice.