



Probity in Planning

***A Protocol for Members and Officers engaged
in the planning process in Blaenau Gwent***

Second Edition

Updated November 2023

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1.0 Introduction and Aim of this Document.

- 1.1 The planning process manages the development of land and buildings in the public interest. It is an increasingly complex system and planning decisions can have a big impact on people's lives as well as upon the value of property. It can and often does become contentious.
- 1.2 It is important that stakeholders have confidence in the integrity of the system. A breach of the rules governing planning can have serious repercussions. It could affect the Council's reputation as well as having cost implications. Complying with the principles and requirements set out in the following pages can help the Council avoid judicial review, appeals, service complaints and referrals to the Local Government Ombudsman.
- 1.3 The aim of this document is to guide and inform Councillors (Members) and Officers as well as other users of the service including applicants, their agents, builders, architects, consultees, and the general public.
- 1.4 It outlines how the planning service will be delivered in Blaenau Gwent. It should be read in conjunction with the Council's Constitution as well as other internal policies such as Planning Advice Notes.
- 1.5 This protocol focusses on the development management function i.e. deciding planning applications, appeals and enforcement. However, issues around the Local Development Plan (LDP) are also covered given the importance of the LDP to the function of Planning Committee and the decision-making process.
- 1.6 The Council's Monitoring Officer has a key role. She/he is responsible for ensuring that all Council services maintain the highest standards. Any Member or Officer who is in doubt over any matter in this document should seek advice from the Monitoring Officer as soon as possible.

Cllr Lisa Winnett
Chair of Planning Committee
November 2023

2.0 **The Planning Process**

2.1 The planning service sits within Development & Estates team which in turn is part of the Regeneration and Community Services Department.

2.2 Development & Estates comprises of 4 teams as outlined below, each reporting to the Service Manager. They are...

i) Development Management – the team is responsible for determining all planning and related applications as well as enforcement and contesting appeals. They report to the Planning Committee.

ii) Building Control – this team also report to the Planning Committee and are responsible for ensuring new development complies with the Building Act 1984. Most of its responsibilities are delegated to the Service Manager. This regulatory process is entirely separate from development management.

iii) Planning Policy – the team reports to a Cabinet Member and is responsible for preparing the Local Development Plan (LDP), the annual monitoring report and other key planning policy documents.

iv) Estates – responsible for the management of the Council’s land holdings as well as the portfolio of industrial units.

3.0 **Roles, Responsibilities and Conduct**

3.1 Planning involves taking informed decisions within a legal and policy context. The decision maker must balance the often competing private interests of the developer with the wider public interest.

3.2 General Principles

Members and Officers have complementary but separate roles. They both serve the public but Members are responsible to their electorate. Officers are accountable to their employing Council. The relationship must be based upon mutual trust and understanding if the service is to be an effective one.

3.3 The role of a Member is to challenge and scrutinise Officers within acceptable boundaries. They must not seek to unduly influence or pressure Officers to put forward a particular recommendation. Similarly they cannot require Officers to find a reason to refuse/approve any planning application on their behalf.

Case Example 1

Acceptable: Planning Committee refuse an application contrary to officer advice because of legitimate planning concerns about highway safety. These reasons are expressed in the Planning Committee meeting and recorded. (This is acceptable as the decision was made for planning reasons - Officers will frame the wording of the reasons for refusal reflecting Members wishes and concerns.)

Unacceptable: A Ward Member becomes aware of objections to an application based on sound planning reasons but wants the application approved anyway. She/he calls in the application for Planning Committee and requests/demands that the Officer recommends approval. (This is unacceptable as the Member is seeking to unduly influence the case officer's professional recommendation)

3.4 Members of Planning Committee

- 3.5 Planning Committee acts in a *quasi-judicial* capacity. This means that the Committee sits in judgement of planning applications in a similar way to a court of law. It must comply with the legal requirements set out in primary and secondary legislation.
- 3.6 The Planning Committee comprises of Members drawn from across the County Borough. A Councillor's knowledge of the issues and area they serve is a key part of the process. When sitting on Planning Committee, their overriding responsibility is to the community of Blaenau Gwent as a whole, not just to their electoral Ward.
- 3.7 Planning applications must be decided in accordance with the development plan and all other material (relevant) planning considerations. This is a legal requirement. For the avoidance of doubt, a material planning consideration is one that is relevant to planning law and the case being decided. Ultimately, the courts decide what is a relevant planning issue. The Council has discretion over what issues are relevant to each case and importantly the weight to attach to each. Some examples of relevant and irrelevant planning considerations are given at Appendix 1.
- 3.8 It is acknowledged that the process can place Members in a difficult position e.g. where there is widespread public opinion either for or against a proposal. Nevertheless, it is a requirement that applications are decided for planning reasons and not on weight of public opinion. At the time of writing, Planning Committee is trialling a system whereby Members of Planning Committee in whose ward an application rests may speak to the item but are not entitled to vote on that application.
- 3.9 There are 5 important principles that members of Planning Committee must follow.
1. Act fairly and openly to avoid any accusations of bias.
 2. Not participate in or organise support or opposition to an application without informing the Monitoring Officer beforehand.

3. Declare any personal or prejudicial interest to the Monitoring Officer.
4. Carefully identify and weigh up the material planning considerations.
5. Make all planning decisions based on land use planning grounds and in the wider public interest.

- 3.10 Members who cannot reconcile this quasi judicial role as opposed to their day to day responsibilities as a Ward councillor or party political considerations must consider whether they are suited to a role on Planning Committee.

Case Example 2

Unacceptable: Planning Committee is deciding a contentious application for a factory. It has the potential to impact upon resident's quality of life. There are numerous letters of objection from surrounding residents and a petition opposing the scheme. Officers and expert consultees are satisfied that all matters have been addressed or can be properly controlled by conditions. Officers have recommended approval based upon the economic benefits for the Borough. The Ward Member who sits on Planning Committee votes against the application because she/he wishes to be seen to support her/his constituents despite privately acknowledging that it should be approved. (This is unacceptable as the Member is placing political motives ahead of planning considerations and the wider public interest.)

- 3.11 Planning Committee Members who are also members of a Town/Community Council or Brecon Beacons National Park.

Membership of another Council is not in itself a conflict of interest. The Member concerned must keep an open mind until all the evidence and arguments have been presented at Planning Committee.

- 3.12 If a Member is present when a planning application is discussed at another meeting, they can ask questions and enter into the debate. However she/he should not express a view and should not vote. This is because that meeting does not usually have the benefit of a professional planning advisor and will not be in receipt of all relevant information e.g. consultee responses. That Member should ensure their position is recorded.

- 3.13 Members who are not on Planning Committee

Members who are not on Planning Committee represent their electoral ward. They may attend open sessions of Planning Committee and speak under the Public Speaking Policy. However they have no vote.

- 3.14 Members in this category must also conduct themselves in a fair and open manner and avoid action that could give rise to accusations of bias or undue influence. As they do not act in a decision making capacity, they may publicly offer support or

opposition to an application prior to Planning Committee but they must respect that Planning Committee Members (and Officers) cannot do the same.

3.15 They can play an important role in advising and representing their electorate where their ward colleague(s) sit on Planning Committee. In that scenario, they can assist their constituents to become actively engaged in the planning process whilst protecting the impartiality of Planning Committee Members.

3.16 The Role of Officers

The role of Officers is critical in providing an efficient, effective and transparent service. Officers shall...

- Act with integrity and fairness in their dealings with all client groups
- Approach every case with an open mind and without pre-conceived opinion.
- Professionally advise all Members and shall not be influenced by party political affiliations.
- The advice given by Officers is their own professional opinion. It will be presented in good faith and on the basis of professional independence.

4.0 Lobbying of Members

4.1 Lobbying or otherwise seeking to influence a decision is an accepted part of the planning process. The Nolan Committee Third Report states *“it is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective way that this can be done is via the local elected representatives, the Councillors themselves”*. However unless care and common sense is exercised by all parties, the impartiality and integrity of a Councillor that has been lobbied can be called into question.

4.2 For the purposes of this document lobbying is defined as any involvement or approach by an interested party where that party is advocating a certain outcome. This can include instances where a Member is copied into correspondence by an interested party or another Member.

4.3 Lobbyists should be advised to send any comments to the planning case officer in order that the points being raised can be considered and incorporated into the Planning Committee (or delegated) report. Members should carefully consider whether to reply to any correspondence. Planning Committee Members should not give any indication of their inclination to vote one way or another and should always copy the case officer in on any reply.

4.4 Planning Committee Members should ensure that they are not perceived by the public as having reached a final position on any matter upon which they will be required to decide until they are presented with all the evidence. If a Planning Committee Member is approached, the most prudent course of action is to not offer

any indication of their views but simply listen to the case that is presented to them and advise on procedural matters only.

- 4.5 If a Member does comment/reply, they should make it clear that any views are provisional pending the consideration of further information (including the Officer's report).
- 4.6 Planning applications often generate strong feelings in the community resulting in public meetings. Members should consider whether it is appropriate to attend as this may be interpreted as adopting a position for/against a proposal. If they do attend, they should record that they are in attendance to hear the debate and will not come to a final decision until they have heard all the evidence.
- 4.7 Political group meetings must not be used to decide how Members will vote on a planning issue. The use of the political "whip" in this way is considered by the Ombudsman to be maladministration.
- 5.0 **Declarations of Interest, Pre-determination and Pre-disposition**
Responsibility for declaring an interest rests with the Members or Officer concerned. In the case of doubt, the Monitoring Officer can advise but the final decision rests with the individual. All participants must remember that the perception of impropriety can be as damaging to the reputation of Council as actual cases of maladministration. These perceptions can be drawn from a Member's comments or action/inaction surrounding the case.
- 5.1 The test of whether a Councillor has a prejudicial interest is to ask themselves whether that personal interest is so significant that a sensible observer, aware of all the facts, would reasonably assume that the Member could be influenced in their decision by that interest. A declarable interest could be...
 - i. A financial interest for the member or their family/associates involving gain or loss whether directly or indirectly associated with a planning application.
 - ii. A non-financial interest includes a relationship of a Councillor or family/friend as a member of a club, trade union, Freemasons or voluntary organisation and that relationship would influence or be perceived to influence their decision.
- 5.2 **Pre-disposition and Pre-determination**
- 5.3 It is acknowledged that a Member of Planning Committee may be pre-disposed to a view. In other words, they may have formed a preliminary opinion based on the facts of the case. However they must remain open to the possibility that during the planning process, they will hear arguments that may change their position.

- 5.4 As long as the Member has no prejudicial interest, keeps an open mind and considers all the evidence, they are entitled to sit on the Planning Committee that decides the application.

Case Example 3

Acceptable: A Member who sits on Planning Committee is notified of an application for a new house in their Ward. The site has a complex planning history. Most of these previous applications have been refused for legitimate planning reasons. The Member concerned was part of the Planning Committee that refused the last application.

The Members initial view is to refuse planning permission again for the same reasons. However, there is a supporting statement with the application making the case for approval.

The Member reads this information carefully and decides to await the Officers report before coming to a final decision. (Predisposed to a view but open to arguments to change their mind.)

- 5.5 Pre-determination is a different principle to pre-disposition. This is where a Councillor's mind is closed to the merits of any argument that differs from their own existing opinion. In such circumstances, the Member concerned must not decide the case as they have already made up their mind before all the information is before them. They are said to have a "closed mind" on the matter. They must inform the Monitoring Officer and declare a prejudicial interest.

Case Example 4

Unacceptable: A Member who sits on Planning Committee receives notification of an application for a wind turbine. They are and always have been against the principle of onshore wind energy and nothing they read will change their position. They intend to vote for refusal regardless of the individual merits of the case. (Unacceptable – the Member has a closed mind and pre-determined the application.)

- 5.6 Members who organise/attend public meetings relating to planning applications may have difficulty in convincing an Ombudsman that they had not predetermined a case. If a Member is in doubt over the important difference between pre-disposition and pre-determination they should take the advice of the Monitoring Officer.

6.0 **Applications submitted by Council, Councillors and Officers.**

- 6.1 The scheme of delegation was revised in Autumn 2023 to the effect that any application submitted by an officer of the planning team (or one directly involved in the planning process) or an elected member cannot be decided under delegated powers. It must be decided by Planning Committee.

6.2 The independence of Planning Committee is very important. It is required to decide applications made by the Council as a corporate body as well as from other parties. All applications submitted by the Council will be treated in the same manner as an application by any other party. They will be the subject of the same validation process, consultation and application of policy to test its acceptability. The Council's scheme of delegation will be applied to Council applications. They may, if considered to meet the tests in the scheme, be determined under delegated powers.

7.0 **Pre-application Advice**

7.1 It is good practice for potential applicants to seek advice from the Council prior to submitting a planning application. Pre-application discussions will in all but exceptional circumstances be a function carried out solely by officers. This is to protect the impartiality of Members. Exceptional circumstances are not defined in this document but will be limited to cases where there is an overriding need for Members to be present in the public interest at the discretion of the Service Manager.

7.2 All pre-application discussions take place on a without prejudice basis. The advice offered is not binding on the Council, but every effort is made to ensure that the advice is consistent and sound in planning terms.

7.3 Pre-application advice is a chargeable service. This places an additional responsibility on Officers to provide a quality service. If Members later take a decision that conflicts with any pre application advice given by Officers, they must only do so for material planning reasons that are clearly expressed and recorded.

7.4 Pre application discussion will be undertaken on a need to know basis. They will not be disclosed to general enquirers unless there is an overriding public interest to do so.

7.5 Members must appreciate that occasionally Officers will be required to attend confidential pre-application meetings and may be required to respect this confidentiality for some time after the meeting.

8.0 **Delegation**

8.1 The Council has delegated responsibility for development management to Planning Committee. They in turn have delegated powers to make decisions in specific circumstances to Officers.

8.2 Delegation is a more efficient and speedy means of determining planning applications. In most instances the outcome will be the same.

- 8.3 The current scheme delegates authority to the Corporate Director of Environment. Operational responsibility for development management, building control and planning policy rests with the Service Manager Development & Estates; it is this officer who will administer delegated powers on a day to day basis.
- 8.4 All decision notices and enforcement notices will be signed by the Service Manager or appropriate Team Manager/Team Leader. Whilst Team Managers are not expressly named in the scheme of delegation, they are authorised to stand in for the Service Manager in the interests of efficiency and day to day business expediency. In addition, Team Leaders are authorised to close enforcement complaint files discharge planning conditions and issue screening/scoping opinions. All professional officers can offer preliminary advice on a without prejudice basis.
- 8.5 If Members wish to call in an application to be heard by Planning Committee, the request must be in writing/email, within 21 days of the date of publication of the application and outline the reasons for the call in. The reasons must be related to the planning merits of the specific case. An oral request or written request that does not in the opinion of the Chair give sound planning reasons for call in will not be agreed.
- 8.6 The Officer's report will address matters raised by the call in. Members who call in applications will be named in the committee report. However, the simple act of call in does not in itself amount to predetermination and does not necessarily prevent the Member concerned sitting on Committee when the application is decided. They should consider whether they have a prejudicial interest or have a closed mind.

Case Example 5

Example of letters from Member to Officer.

Acceptable: "I request application number 2023/0999 be presented to Planning Committee. I have concerns over the size of the parking area and whether it is large enough to serve the development. The Council policy on the matter is unclear and I feel the case should be debated by Planning Committee to ensure that the application complies with the Council's adopted parking guidelines." (Clearly expressing the planning based reason for call in without predetermining the issue.)

Unacceptable: "I request that application 2023/0999 is not decided under delegated powers but presented to Planning Committee". (No reason for call in given.)

9.0 **Planning Committee**

- 9.1 **Officer's reports:** It important that the Officers report informs Members of all relevant considerations. Officers will strive to continually improve reports to ensure that Members are presented with succinct yet comprehensive, quality reports. They will follow the standard template established in BGCBC unless particular

circumstances dictate otherwise. They will always present a recommendation with the reasoning contained in the text.

- 9.2 In the case of a delegated decision, the officer report may be in an abbreviated form but still deal with all relevant planning considerations and be retained on file for future reference.
- 9.3 At Planning Committee, an Officer will briefly introduce each application with the aid of slides. These are intended to inform Members of the site context. They should in most circumstances negate the need for a deferral to view a site.
- 9.4 Public speaking – the adopted Public Speaking Policy allows for one supporter, one objector and the agent to register to speak to the Planning Committee for 5 minutes. There is a deadline for speakers register which is usually midday, 2 days prior to the day of Committee. It is down to the discretion of the Chair to allow each 5 minute slot to be split to allow more people to speak.
- 9.5 Late representations: The officers report will contain a summary any points raised by third parties received prior to the Agenda being published. Any correspondence received after the agenda is published is summarised (with officer commentary provided) in a Late Correspondence Sheet which is circulated to Planning Committee Members by email prior to the meeting and reported verbally at Committee.
- 9.6 Any letters received within 2 days of Committee will be disregarded as too late. This is subject to the 21-day minimum consultation period having elapsed (or further period in the case of re-consultation). These letters will be filed but disregarded unless in exceptional circumstances where a new issue is raised that has not previously been considered. This will be at the discretion of the Service Manager.
- 9.7 Planning Committee usually convenes the first or second Thursday of the calendar month. The cut off date for late correspondence is midday on the Tuesday of Committee week, coinciding with the deadline for registering to speak at the meeting. If Committee is re-scheduled for the Friday, then the deadline moves to midday Wednesday accordingly. This procedure will allow at least 1 clear working day for late letters to be collated, the late correspondence sheet prepared and distributed and if necessary an Officer to re-visit the site.
- 9.8 Site visits, Sub Committees and Special Planning Committees.
Those applications that are referred to Planning Committee are the more complex applications or of wider public interest. They have therefore usually been submitted for a number of weeks/months before they appear on the Committee agenda. For that reason, Members should only consider deferral in exceptional circumstances.

Delays cost money for developers. Unnecessary delay is maladministration and could expose the Council to costs.

- 9.9 Site visits must never be called simply to expose other Members to the strength of public opinion. The public speaking policy exists for the public to be heard at Planning Committee. The volume of objectors or supporters to a planning application is not relevant if the basis of their opinion is based upon non-material planning considerations.
- 9.10 Similarly, applications must not be deferred in an attempt to legitimise overturning the Officers recommendation. If a Member disagrees with the report, she/he should explain to the Committee why they hold a different opinion and present evidence to support that view. A Member can propose a motion to set aside the Officers recommendation without the need for a deferral which can then be debated by Committee without delay.
- 9.11 At the discretion of the Chair, pre-emptive site visits may be called prior to the date of Planning Committee so that Members can familiarise themselves with a site and the proposal and ask questions of the case officer. No debate must take place at these meetings, no decision is taken and no minutes are recorded. They are fact finding visits only.

Case Example 6

Unacceptable Statements at Planning Committee:

“I disagree with the report and request a site meeting.” (Unacceptable - Not based on planning reasons and no explanation for disagreeing with the recommendation. Results in an unjustified delay)

“The Ward Member has requested a site meeting and we should support her/him.” (Clear case of “Warditis” i.e. blindly following the wishes of the Ward Member without proper consideration of the case – a principle identified in a previous WAO Audit of BG Planning).

“The applicant has a poor track record on other schemes” (Taking into account irrelevant factors and not deciding the application on its planning merits.)

- 9.12 Members may consider visiting sites that are due to be discussed before the day of Committee. They should confine themselves to viewing sites from public vantage points and be mindful of advice in this document regarding lobbying if they are approached. If a Member has any questions, they are encouraged to take those matters up with the case officer. This is so that any issues can be addressed and Members are in possession of all relevant information before the application is debated.

- 9.13 In exceptional cases, despite site visits and photographs displayed in the Planning Committee meeting, a site visit is deemed necessary. In all such cases, the reasons for the deferral and the site visit must be clearly recorded. If the professional planning advisor to Committee or the legal representative considers that the reason given is insufficient to justify a deferral, they are duty bound to advise the Chair.
- 9.14 Fact Finding Visits
All Members of the Planning Committee are invited to site visits. Ward members are also invited but no other parties. They are informal meetings and no minutes are taken. They are not open meetings of the Committee. Accordingly, there must be no debate of the merits of the case but discussion limited to questions of fact. This is to ensure fairness to all parties, especially those not invited. Applications must be decided in a controlled environment where everyone has access to the relevant information.
- 9.15 Special Planning Committees
On occasion, Members may decide to convene a Special Planning Committee. This will involve a site visit and a decision taken on that visit provided the Chair is content (as advised by the legal representative) that the meeting has been fair to all sides. Ward Members are invited without voting rights. Third parties are not invited but may attend (subject to the landowner's consent if appropriate).
- 9.16 Decisions contrary to Officer advice
The law requires that all decisions are taken in the light of the LDP. Officer recommendations will have regard to this principle as well as all other material considerations.
- 9.17 If Members wish to take a decision contrary to the professional advice contained in the report (to approve or refuse), they are entitled to do so. They must state clearly their reasons for setting aside the recommendation.
- 9.18 A "cooling off period" will be invoked in all cases to allow resolutions contrary to officer advice to be reviewed and reported to a later meeting. Officers advising the Committee must be given the opportunity to inform Members of the implications of taking a decision contrary to advice.
- 9.19 Where the planning issues are finely balanced, Members will be so advised. Where the Officer considers that the reasons for setting aside the recommendation are not based on sound planning grounds, Members will be asked to consider a deferral so that the implications of the decision can be more fully considered. In this scenario, if Members still wish to set aside the officers recommendation when the matter is re-presented, they must record their reasons for doing so.

- 9.20 Members may wish to delegate authority to Officers to frame conditions or reasons for refusal based upon the issues raised in debate. This is acceptable.
- 9.21 However, it is not the role of Officers to provide Members with reasoning to justify their decision which is contrary to officer recommendation. This role of preparing decision notices in accord with a Member resolution is subject to the principles of independence and professional codes of conduct dealt with earlier in this document.

Case Example 7

Unacceptable: Officers have recommended refusal of an extension to a terraced house as it is considerably longer than normally allowed and has a significant and unacceptable impact on the neighbours. The applicant speaks at Planning Committee stating that she needs an extra bedroom but doesn't justify in planning terms why the normal policy should be set aside. The applicant's case is based purely on personal family circumstances. The neighbours have not objected. Members resolve to approve it because the neighbours did not write in.

(Unacceptable - The decision is potentially unsound. The decision may have been unduly influenced by public speaker, taking into account personal circumstances that are not relevant to the case and making assumptions about the views of nearby residents. This case could amount to maladministration as the impact of development upon the amenities has not been fully considered).

9.22 Ward Meetings

On occasion, the Chair will convene a meeting to discuss a planning, enforcement or an appeal issue that effects a Ward. The purpose of the meeting is to brief Ward Members of any issues that might be of wider interest or where the issues are complex and require an officer to fully brief Members.

- 9.23 This will enable Members to understand the issues and be in a position to advise their constituents. These meetings are informal. No minutes are taken and they are not a decision making body.

10.0 Appeals

- 10.1 Officers will defend planning appeals on behalf of the Council whether by written method, hearing or public inquiry. In some circumstances where specialist knowledge is required it may be necessary to appoint consultants to present the Council's case. There is no budget for such commissions and decisions of this sort will only be taken by the Services Manager.
- 10.2 In cases where an appeal is lodged as a result of a decision taken contrary to Officer advice, the Services Manager will consider whether Members should present the

case for the Council. There will be instances where Officers can act in an advocacy role and defend a decision they do not agree with. However, in cases where that decision is considered unsound, unreasonable or would otherwise compromise the professional integrity of Officers, Members will be required to present the case. Officers will assist in terms of logistical and administrative support.

- 10.3 Whether or not the Officer is a member of the Royal Town Planning Institute, they will be required to respect the professional code of conduct of that RTPI. It demands that Officers do not make statements purporting to be their own but which are contrary to their bona fide professional opinion.

11.0 **Enforcement and Compliance**

- 11.1 Enforcement and compliance are critical elements of providing an effective planning service. The integrity of the planning process is called into question unless those who do not follow the rules are accountable.

11.2 **Enforcement:**

This involves investigating alleged breaches of planning control whether via complaints from third parties or from officer observation when on site.

- 11.3 Councillors can assist the work of Officers by acting as the “eyes and ears” on the ground. If they have reason to believe there has been a breach of planning law, Officers should be informed immediately. Members must not involve themselves personally in the investigation nor negotiate with alleged “offenders”.

- 11.4 Enforcement action is always a last resort but in some instances it is the only remedy. The following factors will be taken into account when deciding whether to take action.

- a. The extent of harm being caused to the amenities and quality of life of occupiers of homes and businesses.
- b. Potential harm to the environment
- c. The willingness of the parties involved to remedy the breach within a reasonable timescale.

- 11.5 A breach of planning control is (in most instances) not a criminal offence. Enforcement action must be proportionate i.e. only sufficient to remedy the breach. It is not an action to punish a developer. The decision whether to take action is a matter of professional judgement and expediency. When appropriate, action will be taken promptly if it is in the public interest especially where the offending party is unwilling to enter meaningful and constructive dialogue with Officers.

11.6 **Compliance:**

The responsibility for complying with the terms of a planning permission rests entirely with the developer. They must carry out the development in accordance with the approved drawings and comply with planning conditions.

11.7 Wherever possible Officers will advise developers but routine pro-active monitoring of sites is not possible due to reduced staffing capacity.

12.0 **Section 106 Obligations**

12.1 Section 106 agreements are legal contracts. They require a developer to a course of action to enable a development to take place e.g. improve an offsite road junction.

12.2 Planning permission must never be bought and sold. S106 agreements are not a mechanism for developers to offer “sweeteners” to the Council to obtain planning permission. Similarly, they are not a means of securing facilities that the Council should be providing in any event regardless of the proposal.

12.3 The obligations placed on a developer must pass the relevant legal tests set out in the Regulations. They must be reasonably required to mitigate any impacts or to enable the development to take place. All s106 negotiations will take place in light of the LDP and the adopted Supplementary Planning Guidance Document.

13.0 **The Local Development Plan**

13.1 The LDP is a key document. It informs planning decisions on major and minor development. Its preparation was subject to public scrutiny and involved the approval of Ward Members at every stage.

13.2 Members must have regard to the LDP unless there are exceptional reasons for setting it aside and those reasons are relevant to planning. To take decisions contrary to the LDP without good reason undermines the plan and leads to inconsistent decision making. In the case of approvals this means inappropriate development and possibly judicial review. In the case of refusal, it weakens the Council’s case at appeal and could give rise to an award of costs.

14.0 **Service Complaints**

14.1 The Council has an adopted complaints procedure. Complaints in respect of Member behaviour should be made to the Council’s Monitoring Officer. She/he will advise the complainant how the matter will be dealt with which will in most circumstances involve referring the complainant to another body who has jurisdiction on the matter e.g. the Local Government Ombudsman.

14.2 Complaints about the planning process or Officer behaviour/conduct should be submitted to the Service Manager Development & Estates. He/she will objectively investigate the complaint and take action as appropriate. If the complainant is not satisfied with the outcome, they can escalate the complaint by writing to the Council's Complaints Manager.

14.3 If a complainant wishes to refer the matter to the Ombudsman for an external review of the case, they will normally be expected to have exhausted the Council's internal complaints procedure prior to the Ombudsman investigating the case.

15.0 **Training**

15.1 The Council has decided that Members of Planning Committee will receive mandatory bespoke training. This will be delivered by Officers following a new intake of Members after an election and on a periodic basis when issues are identified. Members may also request training under the standing item that appears on the Planning Committee agenda every month. Members are encouraged to suggest areas where they feel training would assist them in their duties on Planning Committee. Training may take the form of talks by Officers, reports or circulation of briefing notes.

15.2 The training budget for Officers is extremely limited. The Council acknowledges the need for planning officers to keep abreast of new legislation and best practice and will wherever possible agree to reasonable requests for external training subject to budget limitations. Wherever possible, time off to attend training will be agreed. In return, Officers who attend training will be expected to share knowledge with colleagues upon their return to the office.

16.0 **Hospitality**

16.1 The planning process places Officers and Members in close contact with developers and third parties. It is acknowledged that on occasion, they may offer small gifts e.g. inexpensive pens, diaries, flowers or chocolates in recognition of the service they have received or at Christmas. In the case of Officers, these may be accepted but there must be an element of common sense applied. Officers should consider the value of the gift and whether it might be perceived as an attempt to influence their decision on a current or future case. A rule of thumb set out in the corporate Code of Conduct for Officers is to only accept gifts up to a value of £20. All offers of gifts to Officers must be notified to the Services Manager even where they are declined.

16.2 Neither Officers nor Members should accept significant gifts or hospitality from any service users, actual or potential. Significant is not defined here but common sense will dictate when a present or service goes beyond a token gesture or small gift.

16.3 From time to time Officers and Members may be expected to visit sites outside of the Borough to assess similar development proposals to those being considered for planning permission in BGCBC. In these cases, careful consideration should be given to the level of hospitality and whether this could give rise to perceptions of bias.

Appendix – Planning Considerations

Relevant or Material Planning Considerations

When a decision is made on a planning application, only certain issues can be taken into account. These are referred to as ‘material planning considerations’. This list is not exhaustive or in order of importance.

- ✓ *Local and national planning policies eg the Local Development Plan and Planning Policy Wales.*
- ✓ *EU law and regulations.*
- ✓ *Government circulars, orders, statutory instruments, guidance and advice e.g. TAN’s.*
- ✓ *Planning history including appeal decisions and pre-application consultation with the LPA.*
- ✓ *Case law.*
- ✓ *Socio economic benefits e.g. employment generation.*
- ✓ *Sustainability.*
- ✓ *Nature conservation including habitat and biodiversity opportunities.*
- ✓ *Loss of outlook or overshadowing (not loss of view).*
- ✓ *Flood risk.*
- ✓ *Overlooking and loss of privacy.*
- ✓ *Highway issues e.g. traffic generation, access, highway safety.*
- ✓ *General noise or disturbance resulting from use, including proposed hours of operation.*
- ✓ *Odours, air quality and emissions.*
- ✓ *Archaeology.*
- ✓ *Capacity of infrastructure, e.g. public drainage systems.*
- ✓ *Deficiencies in social facilities, e.g. spaces in schools.*
- ✓ *Contaminated land.*
- ✓ *Loss of or effect on trees.*
- ✓ *Disabled access to existing buildings.*
- ✓ *Effect on listed buildings and conservation areas.*
- ✓ *Layout, scale, appearance and density of buildings.*
- ✓ *Landscaping and means of enclosure.*
- ✓ *Loss of open space.*
- ✓ *S106 or CIL.*

The weight attached to material considerations is a matter of judgement. This will differ from case to case. The decision taker is required to demonstrate that in reaching every decision, they have considered all relevant matters. Greater weight must be attached to issues which are supported by evidence rather than solely by anecdote, assertion or assumption.

Non-material or Irrelevant Planning Considerations:

The Council is not allowed to take the following into account when deciding a planning application.

- ✗ *Devaluation of property.*
- ✗ *Precedent.*
- ✗ *Moral, racial or religious issues.*
- ✗ *Internal layout of buildings.*
- ✗ *Matters controlled by other legislation e.g. structural stability, fire precautions, licences etc.*
- ✗ *Private issues between neighbours e.g. ownership/ boundary disputes, damage to property, private rights of access, covenants, private rights to light, maintenance of property.*
- ✗ *The identity of the applicant, their motives, personal circumstances or track record in planning.*
- ✗ *Previously made objections/representations regarding another site or application.*
- ✗ *Competition between individual private businesses or the “too many already” principle.*
- ✗ *Loss of view.*
- ✗ *Time taken to complete development.*