Section 19

19. Planning Code of Practice

19.1 Introduction

19.1.1 This Code of Practice is intended to guide the procedures by which Councillors ('Members') and Officers of the Council deal with planning matters and to set standards of probity and conduct which the people of Gwynedd can expect of them.

19.1.2 The town and country planning system involves the Council taking decisions about private proposals for the development and use of land, but in the public interest. Planning law requires that all planning applications be determined in accordance with the adopted Gwynedd development plan unless material planning considerations indicate otherwise. The Council must also take account of representations made by the public, in as far as they relate to material planning considerations.

19.1.3 As planning affects peoples' lives and private interests it can be very contentious. It is therefore important that the people of Gwynedd understand the system and have confidence in its integrity and transparency, and that Members and Officers avoid impropriety or even the suspicion of impropriety. This approach is endorsed by the Committee on Standards in Public Life (the Nolan Committee), District Audit and the Local Government Association.

19.1.4 Members must not only ensure that their conduct accords with the Council's Code of Conduct for Members (which cover such matters as declarations of interests, gifts and hospitality), but, when dealing with planning matters, also act in accordance with this Planning Code of Practice.

19.1.5 A breach of this code, while not usually amounting to a breach of criminal law, but may adversely affect the standing of the Council. It could result in a decision being judicially reviewed or in a complaint of maladministration or an allegation of a breach of the Code of Conduct being made to the Local Government Ombudsman.

19.1.6 If Members or Officers are in doubt about the application of this Code they should seek advice from the Council's Monitoring Officer.

19.2 General Roles, Responsibilities And Conduct

19.2.1 The elected Councillors ('Members') and Officers have different, but complementary roles in the planning process. Members of the Planning Committee have different roles to other Councillors.

Members of the Planning Committee

19.2.2 Councillors who are members of the Planning Committee determine the more significant and contentious planning applications received by the Council and make comments on the adoption of planning policy, such as the Development Plan. In doing so these members perform a quasi-judicial role and are required to consider all planning proposals against the wider public interest.

Other applications are delegated to the Head of Environment to decide (see Section 13 of the Constitution).

19.2.3 Planning Committee members shall:

(i) act fairly and openly and avoid any actions which would give rise to an impression of bias;

(ii) avoid inappropriate social contact with applicants and their agents, objectors and other interested parties;

(iii) not organise support or opposition to a planning application;

(iv) comply with the requirements of the Planning Protocol in the Appendix to this Code of Practice.

(v) make decisions purely on planning grounds in the public interest and not favour any person, company, group or locality.

(vi) not decide how to vote on applications on the basis of a political 'whip' but on the planning merits of each case. (The Ombudsman has found that subjecting a planning decision to the discipline of the political whip could amount to maladministration);

(vii) ensure that the reasons for their decisions are clearly stated.

All Members

19.2.4 Members shall not pressure officers to make particular recommendations in reports in reports, or when deciding on delegated decisions.

Officers

19.2.5 The function of officers is to support and facilitate the Councillors in their work.

19.2.6 The Head of Environment makes decisions on planning applications under delegated powers and makes recommendations on more significant and contentious applications and other planning matters for decision by the Planning Committee and the Council. Local Members or any other two members can ask for any planning matter to be referred to the Planning Committee for a decision rather than by the Head of Environment under delegated powers (see Section 13). In considering applications and in advising members and the public on planning policy, the determination of planning application, enforcement and other planning matters, the Planning Officers shall :-

(i) act fairly and openly and avoid any actions which would give rise to an impression of bias;

(ii) avoid inappropriate social contact with applicants and their agents, objectors and other interested parties

(iii) approach each planning application/issue with an open mind, avoiding pre-conceived ideas

(iv) carefully weigh up all relevant planning issues.

(v) make decisions purely on planning grounds having regard to the development plan and other material considerations

(vi) give professional, objective and consistent planning advice

(vii) provide a comprehensive and accurate analysis of the planning issues

(viii) give a clear recommendation

(ix) carry out the decisions of the Committee

19.2.7 The Monitoring Officer will advise members on legal and procedural matters. In doing so, he/she must :-

(i) act fairly and openly and avoid any actions which would give rise to an impression of bias;

(ii) avoid inappropriate social contact with applicants and their agents, objectors and other interested parties;

(iii) give professional, objective and consistent advice;

(iv) carry out the decisions of the Committee so far as they relate to the completion of any legal agreement, institution/defence of proceedings, etc.

19.3 Pre-Applicaton/Decision and Enforcement Discussions

19.3.1 Discussions and negotiations are essential in the planning process as they can bring about improvements that can make an application acceptable or otherwise remedy problems.

19.3.2 Such discussions will normally take place at officer level and members shall, wherever possible, refer requests for such advice to the officers. If members become involved in such discussions they should make clear that their views are personal and provisional and they may wish to make a record of the discussion.

19.3.3 All officers taking part in such discussions shall:

(i) make clear whether or not they are the decision maker for the purposes of the application/issue under discussion;

(ii) make clear that only personal and provisional views can be expressed which will not bind the Council to reach a particular decision when determining an application;

(iii) express views in the context of the development plan and other material planning considerations;

(iv) be consistent in interpreting planning policies;

(v) advise applicants and neighbours/objectors on procedural matters.

19.3.4 Occasionally local people or Community/Town Councils will arrange public meetings to discuss a current application and may invite the applicants, members and officers to attend. Given the need to avoid pre-determination members of the committee and

officers who attend such meetings shall otherwise act in accordance with paragraphs 19.2.2 to 19.2.3 and 19.3.3 above.

19.4 Planning Applications Submitted By Members

Community/Town Councils And Officers

19.4.1 Planning applications submitted by or on behalf of members or officers employed in the planning service or their close relatives where known, shall be decided by the Planning Committee and not by the Head of Environment under delegated powers. This will also apply where the member or officer is acting as an agent for another party. ("Close relative" is defined as spouse, partner, child or sibling).

19.4.2 The affected member shall declare an interest and take no part in the decision.

19.4.3 The affected officer shall take no part in the decision.

19.4.4 Where a Community/Town Council submits a planning application, the County members who are also members of the Community/Town Council should disclose their interest and not vote on that application should it come to committee for decision.

19.5 Planning Applications Submitted By The Council

19.5.1 It is critical that the Council is seen to be treating applications for its own development (or a development involving the Council and another party) on an equal footing with all other applications as well as actually doing so.

19.5.2 All such proposals will be subject to the same administration processes, including consultation, as private applications with consideration being made in accordance with policy and any other material planning consideration.

19.6 Officers' Reports to the Planning Committee

19.6.1 All Planning matters considered by the Planning Committee will be the subject of full written reports by the Head of Environment(or, in the case of legal matters, the Monitoring Officer) incorporating his/her recommendations. Such reports shall be comprehensive, but succinct in setting out the key planning (or legal) issues to be considered (in terms of the provisions of the development plan and other material planning considerations), the substance of any representations received and any relevant planning history. All late representations received after the completion of committee reports, but received within the prescribed consultation process, will be copied and made available at the Planning Committee, wherever practicable.

19.7 Site Inspection

19.7.1 Site visits are fact finding exercises which allow the Planning Committee to make a more informed decision than would otherwise be possible from reading the Officer's report and considering the views expressed at the Planning Committee meeting.

Request for on-site visits

19.7.2 Request for a site visit shall be made to the Planning Committee by a member or any Councillor who has exercised the right to "call-in" in accordance with the adopted procedures.

19.7.3 All requests for a site visit must provide full planning reasons and an outline of the issues they would like the panel to inspect while on site.

19.7.4 If a request is accepted by the Committee, the matter will be adjourned to the next meeting of the Planning Committee.

Criteria for agreeing to hold a site visit

19.7.5 At the discretion of the Committee Chair, site visits can be held before the application is submitted to Committee for the first time. To this end the Committee Chair will consider any application in accordance with the criteria set out. Such applications must be submitted in writing through the Planning Service, at least 3 working days before the Committee is held.

19.7.6 Site visits involve a delay in determining the application concerned and additional cost. While the decision whether to undertake an inspection is a matter for the Planning Committee, members of the Planning Committee shall ensure that such visits are only held where the Committee cannot make an informed decision without seeing the site for themselves and the inspection would offer substantial benefits in the context of gathering information which would assist the decision making process. Examples where a site visit would not normally be appropriate include where:

- Policy matters or issues of principle are at issue
- The member simply disagrees with the conclusion reached in the report
- The member wishes to consider boundary or neighbour disputes
- Issue of competition
- Loss of property values
- Any other issues which are not material planning considerations
- Where the Councillors have already visited the site within the last twelve months, except in exceptional circumstances.

Attendance at Site Visits

19.7.7 Members of the Planning Committee will carry out the inspection.

19.7.8 The inspection will take place on the morning of the Planning Committee.

19.7.9 The applicant and the local member have a right to attend at the site and may answer questions as to facts only. No discussion as to the merits, etc. of the application should take place on site.

19.7.10 The public does not have a right of attendance at the site, other than from public vantage points.

Conduct at Site Visits

19.7.11 The site visit will be chaired by the Chair of the Planning Committee (or in his/her absence, the Vice-chair) who will ensure that the inspection is conducted in an orderly fashion.

19.7.12 Members of the Planning Committee shall not make comments that would create an impression that they have already formed a view on the merits of the application.

19.7.13 Members of the Planning Committee shall not discuss the application, other than to clarify issues of fact, and shall not make a decision while on site.

19.7.14 If a member finds it necessary to visit a site alone (perhaps because it was not possible to attend the site visit), he or she shall view it from public vantage points only, seek to avoid discussion with interested parties, and, if discussions occur, make it clear that a decision will be taken when it has been discussed by the Committee after the visit.

19.7.15 Following the site visit the application will be discussed at the Planning Committee.

19.8 Appeals Against Council Decisions

19.8.1 Officers will organise and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances it may be necessary to appoint consultants to appear for the Council.

19.8.2 In giving evidence, officers will present the best possible case on behalf of the Council while complying with the RTPI Code of Professional Conduct*.

19.8.3 In cases where the appeal is against a decision which the Committee has made contrary to the Officers' recommendation, the planning case-officer may be able to give evidence, but in some cases, another officer or consultants will be employed if the Head of Environment consider that the case-officer's previously stated views may be unhelpful to presenting a full case. In exceptional cases a member will be nominated to represent the Council's case.

19.8.4 Members can have an important role to play in appeals and may, within set deadlines, make written representations to the inspector and may also appear at Informal Hearings or as a witness of Inquiries. In doing so, they should state whether they are acting in their local Councillor capacity or, exceptionally, representing the Council's case.

19.8.5 Officer shall support members who wish to attend the appeal and/or make representations and advise them on preparing and delivering evidence.

* The Royal Town Planning Institute Code of Professional Practice requires, inter-alia, that Planning Officers who are members of the Institute do not make statements purporting to be their own, but which are contrary to their bona-fide professional option.

Appendix

Section 19

Protocol For Councillors

The following protocol seeks to clarify the roles of the members of the Planning Committee ("the Decision Maker"), Local Members and Councillors generally.

1. Introduction

1.1 The Council has one Planning Committee comprising 15 members which determines those Planning Applications referred to it for decision in accordance with the Gwynedd Planning Delegation Scheme.

1.2 A planning application will, however, in accordance with the Gwynedd Planning Delegation Scheme more often than not be determined by the Head of Environment rather than the Planning Committee. In this situation those Members who sit on the Planning Committee will have no role to play in the decision making process.

1.3 In respect of a Planning Application in his/her electoral division or which affects his/her electoral division a Councillor may exercise the power of call-in (so that the application is dealt with by the Planning Committee and not the Head of Regulatory).

1.4 A Councillor may also in respect of a Planning Application in his/her electoral division or which affects his/her electoral division attend a meeting of the Planning Committee when that application is determined to put forward the views of those constituents he/she represents.

1.5 The roles and powers of Councillors may be restricted where there are conflicts between their position as Councillors and their private or outside interests.

1.6 These roles and powers of members are defined in more detail below.

2. "Decision Maker" Role

2.1 A Councillor who is a member of the Planning Committee and who takes part (or who intends to take part) at a meeting of the Planning Committee in the determination of particular Planning Application will for the purposes of this Protocol be a "Decision Maker" in relation to such Planning Application.

2.2 A Councillor who is a Decision Maker shall comply with the provisions of the Members' Code of Conduct generally.

3. "Local Member" Role.

3.1 When a Planning Application is in a Councillor's electoral division, the Councillor may attend a meeting of the Planning Committee to make representations about the planning application on behalf of his/her constituents, and for the purposes of this Protocol he/she will be a "Local Member" in relation to that Planning Application.

3.2 When a Councillor is a member of the Planning Committee, the Councillor cannot be a Decision Maker in relation to planning applications in his/her electoral ward. In relation to any planning application in his/her electoral ward every councillor shall be a Local Member in the context of this protocol.

3.3 When a Local Member, for whatever reason, cannot be present at the Planning Committee where an application in his/her electoral ward is to be discussed, he/she may arrange for another Councillor to attend the Planning Committee and make representations about the Planning Application on behalf of his/her constituents. In such circumstances this Councillor shall be the Local Member in the context of this Protocol.

3.4 A Councillor who is a Local Member shall comply with the Public Speaking Provisions and the Members' Code of Conduct generally. Further provisions relating to the "Local Members" role are also contained in the next following section.

3.5 When a councillor who is a Local Member has a prejudicial personal interest in accordance with the Members' Code of Conduct, he/she will not be entitled to address the Committee. In such circumstances he/she can arrange for another councillor to attend the Committee in order to submit observations regarding the planning application on behalf of the electorate.

4 Non-Planning Committee Member Role

4.1 Subject to the provisions of the Members' Code of Conduct generally a Councillor who is not a Member of the Planning Committee (whether or not he/she plays or intends to play the role of "Local Member") will be free to :

- discuss any planning application with the applicant/agent/objector/lobby group, etc.
- attend any locally organised meeting concerning the application;
- attend any Town or Community Council Meeting concerning the application and speak about the application (including expressing a view either for or against the application) and (if a member of the Town or Community Council) vote upon the application;
- relay relevant information about the application to a planning officer;
- seek information/clarification about the application from a planning officer;
- should follow the rules on lobbying in accordance with Section 13 of this Protocol.

5. "Call-In"

5.1 A Councillor (whether a Member of the Planning Committee or not), in respect of a planning application in his/her electoral division, or which affects his/her electoral division, or any other two Councillors (whether a Member of the Planning Committee or not), may submit a written request to the Gwynedd Planning Manager within the established timescale so that the Planning Application be referred for determination

to the Planning Committee. The written request should contain clear planning reasons for requesting an application to go to the Planning Committee.

5.2 Where a Councillor exercises the right to "call in" a planning application to the Planning Committee in accordance with 5.1 above, the prescribed period for notification shall be 16 calendar days from the date of the letter of notification.

5.3 Where two Councillors (not being a Local Member) exercise the right to "call in" a planning application to the Planning Committee in accordance with 5.1 above, a letter of notification should be sent to the Local Member.

5.4 Where two Councillors (not being a Local Member) exercise the right to "call in" a planning application to the Planning Committee in accordance with 5.1 one of the said Councillors may make representations to the Planning Committee in relation to that specific application. Such Councillor shall comply with the Public Speaking Provisions and the Members' Code of Conduct.

5.5 For the avoidance of doubt where a Councillor exercises his right to speak in accordance with 5.4 above, this is in addition to the rights of the Local Member in accordance with 4.1 above.

6. Predetermination

6.1 Whilst taking part in meetings of the authority, or whilst making decisions about an item before the Planning Committee, a Decision Maker should do so with an open mind and objectively. During the decision making process a Decision Maker must act fairly taking proper account of the public interest. In planning decisions, the decision must always be made on the basis of the facts submitted, and a Decision Maker's mind must not be made up in advance to the extent that he/she is entirely unprepared to consider all the evidence and advice given.

6.2 Having a completely closed mind is known as pre-determination. A Decision Maker is entitled to hold a preliminary view about a particular matter in advance of a meeting (pre-disposition) as long as he/she keeps an open mind and is prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching a decision.

6.3 Pre-determination on the other hand would be where a Decision Maker has clearly decided on a course of action in advance of a meeting and is totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

6.4 Therefore, a Decision Maker should consider the above carefully before taking part in the Committee as a Decision Maker. The advice of the Monitoring Office should be sought in advance and if it is considered that a Decision Maker has predetermined in relation to a specific item an open declaration should be made before the item is considered by the Planning Committee, and the person should not speak or vote on the item and should leave the Chamber during the discussion.

7. A Councillors' Direct Connections With Applicants And Others

7.1 If a Councillor advises applicants, agents, objectors or other interested parties about the likely acceptability of planning proposals then in relation to planning applications relating to those proposals that Councillor cannot undertake the role of "Decision Maker"

7.2 A member who wishes to ensure that he/she remains eligible to carry out the role of "Decision Maker" should advise prospective applicants to contact a Planning Officer for advice on both merits and procedures.

8. Members Should Seek Advice

8.1 A Councillor in any doubt as to his position under this Protocol or Members' Code of Conduct should always seek the advice of the Monitoring Officer.

9. Obligations Of "Decision Maker"

9.1 A Decision Maker in relation to any planning application to be determined by the Planning Committee:

- shall not lobby or influence or attempt to lobby or influence another Decision Maker or the Head of Environment concerning such a planning application and its determination prior to the Planning Committee considering and determining that planning application;
- shall not accept any gifts or hospitality from anyone connected with such planning application and take immediate steps to register any offers or gifts or hospitality refused in the register kept for that purpose by the Monitoring Officer;
- shall not accept or indicate that he/she will accept any letter, pamphlet or other written material (including e-mail and fax) concerning such a planning application before it is determined by the Planning Committee. Where a Decision Maker gratuitously receives such material he/she forthwith forwards it to the Head of Environment(who shall notify the sender, if known, that the material has been forwarded to him/her and will be referred to, as appropriate, in the Officer's Committee Report)
- shall not attend any Meeting, Briefing or Discussion concerning such planning application which is not arranged by or attended by the Head of Environment or otherwise authorised in writing by the Monitoring Officer and shall have regard to the provisions relating to attending public meetings in Section 10 below;
- shall not indicate or express publicly or privately the likely decision on or the merits of/objections to, such planning application prior to the Planning Committee considering and determining that planning application. In the event of a Decision Maker doing so he/she must take advice from the Monitoring Officer regarding him/her continuing in the role of the Decision Maker;

- shall not give a commitment in relation to that planning application prior to its consideration at the Planning Committee. It is of vital importance that Councillors come to meetings with an open mind and can demonstrate that they are open-minded;
- shall not bring detailed presentations with him/her to be read out at the meeting. This could be perceived as indicating that the Councillor had already decided in favour of, or against an application prior to attending the meeting. (It is recommended that Councillors make notes of points raised at the meeting as they occur for use in any presentations);
- shall not vote or take part in the Planning Committee meeting of he/she has not been present to hear the entire debate, including the officer's presentation concerning the application;
- shall not resume his/her seat in the Planning Committee room or chamber (having left the room or chamber before the debate on the application began or during the debate on the application) until consideration of the application being determined at that time is concluded;
- shall not propose, second or support a decision contrary to the Development Plan or the recommendations of the Head of Environment without clearly identifying and articulating the planning reasons supporting that proposed decision. Those reasons must be given prior to the vote and be recorded in the Minutes;
- shall not move a motion that the planning application be deferred without clearly identifying and articulating the reasons justifying such deferral. Those reasons must be recorded in the Minutes if the planning application is deferred;
- shall not vote on the application at an earlier meeting of a Town or Community Council. In the event of a Decision Maker doing so he/she must take advice from the Monitoring Officer regarding continuing in the role of Decision Maker.

9.2 A Councillor who is a Member of the Planning Committee and who wishes to undertake the "Local Member" role in relation to a planning application which is to be determined by the Planning Committee shall comply with the provisions in this Protocol relating to the "Local Member" particularly those in Sections 4 and 13.

9.3 A Councillor who is a Member of the Planning Committee shall comply with the Members' Code of Conduct and is reminded in particular that if he/she has in respect of a planning application to be determined by the Planning Committee

i) a Personal Interest - the requirements as to disclosure;

ii) a Prejudicial Interest - the need to obtain a dispensation from the Standards Committee - or otherwise be unable to undertake the role of a Decision Maker.

10. Decision Maker Who Has Exercised Power Of Call-In

10.1 If a specific planning application falls to be determined by the Planning Committee as a result of a Call-in request from a member of the committee then that member needs to consider carefully the role which he/she is able to play when the Planning Committee comes to consider and determine the application in question. In particular where the Member of the Planning Committee who has made the Call-in request :-

- has couched the Call-in request in language which might indicate that he/she has already formed a clear and settled view as to the appropriate outcome of the application; or
- has made the Call-in request following discussions with the applicant/ agent/objector and/or any third party (including another Councillor whether a Member of the Planning Committee or not). The member should seek advice from the Monitoring Officer regarding him/her continuing in the role of the Decision Maker.

11. Obligations Of "Local Member"

11.1 A Councillor acting as a Local Member (whether a member of the Planning Committee or not):

- shall not sit with members of the Planning Committee, when attending a meeting of the Planning Committee concerning the planning application in question and must wait to be called to make any representations in the public area of the room;
- shall not speak to any member of the Planning Committee in relation to the planning application in question, either during a meeting of the committee or otherwise;
- may, in relation to the planning application in question with the consent of the Chair, respond to questions from members of the committee, the applicant or his agent and any other party allowed to speak at the meeting;
- shall not accept any gift of hospitality from anyone connected with the planning application in question and take immediate steps to register any offers of gifts or hospitality refused in the register kept for that purpose by the Monitoring Officer.

11.2 Members who are not on the Planning Committee are expected to undertake training provided by the Council at least once annually to enable them to properly carry out their role as local representative.

11.3 A Councillor acting as a local member who requires further information on the planning application in question should seek such information from the relevant planning officers and not from members of the Planning Committee.

12. Rights Of "Local Member"

12.1 For the avoidance of doubt a "Local Member" will have those rights set out in Section 4.1. of this Protocol under the heading of "Non-Planning Committee Member Role".

13. Lobbying

13.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the Planning Committee. As the Nolan Committee's Third Report states... "It is essential for the proper operation of the Planning system that local concerns are adequately ventilated. The most effective and suitable way this can be done is via the local elected representatives, the Councillors themselves."

13.2 However, such lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a councillor being called into question.

13.3 When being lobbied, a Decision Maker should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on an issue before they have been exposed to all of the evidence. They should restrict themselves to procedural advice only.

13.4 It is recommended that Councillors should not lobby Councillors who are members of the Planning Committee regarding their concerns or views not 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.

13.5 Councillors should not 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. Political Group Meetings should not be held prior to Planning Committee.

14 Training of Planning Committee Members

14.1 The Council shall ensure that Members of the Planning Committee satisfactorily complete induction training before first serving on the Planning Committee and undertake from time to time additional/refresher training in accordance with a training programme agreed by the Council.

14.2 Attendance records for planning training events shall be monitored. A six monthly report shall be presented to the Principal Scrutiny Committee regarding presence by members on training events. A member of the Planning Committee who fails to attend the training sessions shall not be permitted to sit on the Planning Committee until such training has been completed. A new member of the Council shall undertake a training session before he/she is permitted to sit on the Planning Committee.

15. Training of Other Members

15.1 Appropriate training for members who do not sit on the Planning Committee will be arranged so as to enable them to properly discharge the role of a Local Member.

16. Planning Applications by Members

16.1 Where a planning application is made by a member, any such member should comply with the Members' Code of Conduct generally. However, the member will have the right to address the Committee as the applicant in accordance with the Rules on Public Speaking. Immediately after addressing the Committee the member should leave the Chamber whilst the application is discussed in accordance with the Members Code of Conduct.