

Brecon Beacons National Park Authority

Planning Protocol



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BRECON BEACONS NATIONAL PARK AUTHORITY PLANNING PROTOCOL

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Planning Protocol

1.0 Introduction

Purpose

- 1.1 This Planning Protocol has been adopted by the Brecon Beacons National Park Authority to govern the performance of its planning function. The Protocol has the following objectives:
- To guide Members of the Authority in dealing with planning related matters
 - To provide more detailed guidance on the standards to be applied specifically in relation to planning matters
 - To apply internal rules to the way in which the Authority will deal with planning matters
 - To inform potential users of the planning service, and members of the public generally, of the standards adopted by the Authority in the performance of its planning function.
- 1.2 The Planning Protocol is separate from, and in addition to, the Authority's Code of Conduct for Members which was adopted by the Authority on 27 June 2008 although some provisions of the Protocol may to a certain extent deal with issues which are also dealt with by the Code of Conduct. It aims to reflect the Local Government Association's update to its guidance entitled "Probity in Planning – The Role of Members and Officers" (2002).
- 1.3 It is useful to include here the following extract from the LGA guidance -
- "The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Members who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee."* (para 5.4)
- 1.4 This amended Protocol was reviewed, amended and approved by the full Authority on ~~28 September 2012~~^{22nd May 2015}. It applies from that date.
- 1.5 The provisions of this Planning Protocol are designed to ensure that whenever Members consider a matter relating to the planning function all decisions are taken on proper planning grounds and are taken in a consistent and open manner and that Members making such decisions are perceived as accountable for those decisions. The Planning Protocol is also designed to assist Members in dealing with approaches from applicants/developers and third parties and is intended to ensure that the decision-making process is sound. In this way the prospect of legal challenge or

complaint against the Authority, its individual Members or officers in making proper planning decisions is limited.

- 1.6 Whilst Members have a personal responsibility to ensure that they conduct themselves at all times within the requirements of this protocol, the Authority's ~~officers~~Officers, including the Monitoring Officer, ~~and Deputy Monitoring Officer~~ should be consulted if Members are in any doubt as to the application of the requirements of the protocol in any circumstances.

Application

- 1.7 The following guidance should be followed by all Members not only in respect of the formulation and adoption of development plan policies but also in respect of development ~~control-management~~ functions (planning applications of all types including listed building consent, ~~and~~ certificates of lawful use, notifications and the determination of all enforcement matters etc.). It applies to meetings of the Authority when dealing with such matters and it applies to the conduct of Members even before a formal application or proposal is submitted.

- 1.8 Failure to comply with this Planning Protocol may result, or play a significant part, in
- the investigation of complaints of maladministration or allegations of failure to observe the Code of Conduct for Members by the Public Services Ombudsman for Wales
 - complaints to the Authority's Standards Committee
 - judicial review proceedings in the High Court
 - appeals to the Assembly (eg in respect of awards of costs)
 - complaints about the conduct of officers.

An alleged failure by a Member to comply with this Protocol may be referred to the Authority's Standards Committee. Other alleged failures shall be dealt with through the Authority's complaints procedure

- 1.9 This Protocol applies to both Members and ~~e~~Officers who become involved in operating the planning system – it is not, therefore, restricted to professional ~~€~~Town ~~p~~Planners and National Park Authority and Planning, Access and Rights of Way Committee ~~M~~members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

Code of Conduct

- 1.10 The Authority's Code of Conduct for Members which includes mandatory requirements with regard to personal interests must be complied with throughout the decision-making process. Members should also have regard to guidance issued by

the Public Services Ombudsman for Wales. Decisions should not be influenced by personal interests of Members (including the interests of those with whom they live, by whom they are employed or with whom they otherwise have a close personal association) or because of undue pressure exerted by applicants, agents or third parties [such as Town or Community Councils](#). It is necessary to avoid even giving the impression that decisions may have been so influenced.

- 1.11 The responsibility for disclosing a personal interest rests with individual Members. A similar responsibility applies to [eOfficers](#). In the event of uncertainty, Members should seek advice on the application of the Code from the Monitoring Officer ~~or Deputy Monitoring Officer~~. Early notification of disclosure interests is particularly important to allow proper consideration of the issues. This Planning Protocol outlines further rules applicable to the planning process in the Authority.
- 1.12 In addition to the Authority Code of Conduct, Members should be mindful that Planning [eOfficers](#) will be conducting themselves and the advice they give in accordance with the [Royal Town Planning Institute \(RTPI\) T.P.I.](#) Code of Professional Conduct. Those [eOfficers](#) who are members of the ~~R.T.P.I./RTPI~~ are bound by this code and those [officers](#) who are not yet members will be encouraged to become members and will aspire to the code.

2.0 LOBBYING

2.1 This section is intended to ensure –

- that high standards are maintained when planning decisions are taken;
- ~~in particular~~ that the integrity of the decision-making process is not impaired, either in reality or in perception, through the lobbying of those Members who will make decisions;
- that the fact that approaches have been made by lobbyists* are recorded, and that any representations made to Members form part of the public information leading to any decision.

(*in this protocol “lobbyist”, “interested person/party” etc includes the applicant, supporters, objectors, agents and family members etc.).

2.2 To avoid compromising their position in making a decision before they have received all the relevant information, Members must –

- Take care in any contact with interested parties to ensure that they are not unduly influenced in any way by one party or another and to avoid making it known in advance whether they support or oppose the proposal. If possible any meetings with Members should be arranged by and attended by an appropriate ~~officer~~ [Officer](#) and will include the Chair of the PAROW Committee or his/her representative;

- Not advise interested parties or their agents on the likely acceptability of planning proposals;
- Restrict their views to giving procedural advice and listening to concerns and views;
- Direct lobbyists to [pPlanning eOfficers](#), who will include reference to their opinions, where relevant, in their report;
- Not organise support for or against a planning proposal;
- Not lobby other Members;
- Not pressurise [eOfficers](#) to make a particular recommendation in their report;
- Not circulate unofficial papers to other Members or at Committee meetings;
- Not attend the application site with interested parties or their representatives.
- Not allow those with whom they live, by whom they are employed or with whom they otherwise have a close personal association to exert undue influence [on their decision making](#).

- 2.3 Where a Member has been lobbied, he/she should report to the relevant Committee that he/she has been lobbied and by whom. However, Members must act in the public interest and not at the behest of any individual or interest. If the Member feels that he/she no longer retains an open mind on the matter, ~~but-or~~ that his/her impartiality has been compromised, he/she should act as if they had a prejudicial interest and withdraw from the meeting. If a Member feels that they are subject to excessive lobbying, they should contact the Monitoring Officer for advice.
- 2.4 If a Member involved in determining planning matters has responded to lobbying by openly advocating a particular course of action prior to a Committee meeting, and there may be particular local circumstances where this is considered appropriate, that Member should act as if they had a prejudicial interest and withdraw from the meeting.
- 2.5 Members involved in determining planning matters who find themselves in a lobbying situation may wish to take steps to prevent this happening, and explain that whilst they can listen to what is said, they are constrained from expressing a firm point of view or an intention to vote one way or another.
- 2.6 Where Members involved in the determination of planning matters are in attendance at public meetings they may listen to the debate on current planning matters and may provide advice about procedures involved in determining an application, considering unauthorised development etc. Where Members find it appropriate to express a view on a matter in such meetings so as to indicate that they have made up their mind on the proposal etc, they should then act as if they had a prejudicial interest and withdraw from the Authority meeting when he matter is discussed.
- 2.7 Where a Member receives written representations directly in relation to a planning application, local plan proposal, enforcement issue etc., the Member shall as soon as practical pass the correspondence to the Planning Case Officer in order that those

representations may be taken into account in any report to the PAROW Committee. This does not apply to circular letters which indicate that copies have also been sent to the Authority itself.

- 2.8 Where there is a family relationship directly or by marriage related to a planning application or a development plan policy/proposal, Members should act as if they had a prejudicial interest and withdraw.

3.0 Membership of another Local Authority

- 3.1 A Member who is also a member of a [town](#), community or other council may discuss a planning matter at that level.
- 3.2 If at the other council's meeting, or indeed elsewhere, the Member had given the impression that he/she had made up his/her mind during the debate or in the voting on a particular planning matter before hearing all the information and advice presented later at the Authority's meeting, then they are likely to be considered as having predetermined the matter (i.e. having a closed mind).
- 3.3 In those circumstances, the Member should not participate at the PAROW Committee meeting. Such participation could lead to a complaint of maladministration or other legal challenge of the Committee's decision.

4.0 Formal Site Visits

- 4.1 Only formal site visits should be made in relation to any 'live' current planning application to be determined by that committee. As part of [the](#) formal decision making process the PAROW Committee may only decide that a formal site visit should be made if [it is wholly](#) satisfied that:
- Following the [Officers](#) presentation of the report ([but before and all any](#) public speaking in relation to the proposal), it is considered the application requires the judgement of Members based on site characteristics or visual interpretation which cannot readily be seen from photographs, slides etc. – eg impact on amenity; effect on highway safety and traffic flows; effect on the character of the area; effect on the character or setting of a listed building or conservation area; effect on townscape or landscape; [and/or](#)
 - the proposal relates to a new or novel form of development and which may require a visit to an existing establishment as well as to the proposal site in order to appreciate the potential planning implications; [and/or](#)
 - development has been commenced or completed, which if refused planning permission would normally require enforcement action and a site inspection would assist in determining the expediency of such action.
- 4.2 The minutes shall record the reason for the proposed site visit. [Before requesting a vote to defer the consideration of an application for a site visit, Members must be](#)

sure that they are available to attend the subsequent site visit and meeting to consider that application. The Public Speakers for that particular item will then be offered the choice of making their presentations then or at the subsequent meeting.

4.3 The ~~Head of Development Control~~Director of Planning/Planning and Heritage Manager or and his/her/their assistants shall organise such site visits. The letter/email reminding Members of the date and location of the formal site visit shall include the reason for the site visit. Where possible, the site visit will take place ~~on the next available published site visit date (usually within~~within 2 weeks ~~after of the original PAROW Committee meeting, to be followed by a meeting of PAROW to determine the application.)~~in the PAROW Committee timetable. The applicant will be expected to ensure safe access is available to the site for Members and ~~officers~~Officers on the day.

4.4 The applicant and any objectors/supporters (who have provided written comments on the application) will be informed –

- that a site visit will take place
- that the purpose of the site visit is that Members should have the fullest appreciation of the nature of the site and the impact of the proposed development; and
- that the Members will not hear any representations from the applicant or any objectors, neither of whom shall be present.

4.5 Where ~~appropriate clarification would be helpful, and with the agreement of the Chair or Deputy Chair of PAROW,~~ the agent acting on behalf of the applicant will be invited to attend the site visit to allow access to buildings and to answer any queries raised by Members. Officers shall advise the agent and/or applicant that attendance at the site meeting is not an opportunity to discuss the merits of the case, but rather to enable members to gain a better appreciation of the site characteristics. –In addition, Officers will invite relevant Officers from within the NPA and the constituent Unitary Authorities or bodies (e.g. –highway authority, sewerage undertaker and Environment Agency) shall be invited to the site visit in order to answer any questions from Members.

Comment [JG1]: Inserted by Governance & Member Development Working Group

4.6 At site visits –

- The Chairman of the Committee will chair and manage the site visit;
- Members of the Planning and Rights of Way Committee shall keep together as a group and shall not engage individually in discussion with anyone who is not present as part of the site visit;
- Officers will point out the relevant aspects of the site and give the Members an opportunity to ask questions of them or of the Agent acting on behalf of the applicant;

- Members will formulate their views on those aspects which determined the need for a site visit. The views will not be discussed in the presence of the applicant or any objectors;
- The views of the Members will be recorded and included in the minutes of the site visit meeting.

4.7 Following the site visit, Members and eOfficers shall ~~(if practicable)~~ reconvene a formal PAROW meeting ~~(that day)~~ and proceed to debate the application and ~~to~~ make a decision.

5.0 Meetings of the Planning and Rights of Way Committee

5.1 The *Town and Country Planning Act 1990*, Section 54A and *Planning and Compulsory Purchase Act 2004*, Section 38(6) state that “Applications for planning permission, or for the renewal of planning permission, should be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise”. Thus, where the Development Plan is relevant, the Authority must determine applications in accordance with the plan unless material considerations indicate otherwise. This statutory requirement is a fundamental principle for the Authority’s approach to decision-making.

5.1a The Development Plan is the adopted Plan for the area which in this case is the ~~1999~~ Local Development Plan (December 2013). ~~However the Authority has determined to give more weight in development control decisions to the more recent and up to date Authority Approved Unitary Development Plan, 2007.~~

5.2 PAROW Agendas will contain reports on:

- ‘Items for Decision’ - comprising applications (both planning applications and rights of way diversions) and any other Development Control/Management related matters upon which Members are required to make a decision, and;
- ‘Items for Noting’ - upon which a decision has already been taken under Delegated Powers. Members may engage in debate or ask eOfficers questions about ‘Items For Noting’

Non-Delegated application reports are full reports covering all ~~relevant material considerations~~ (in planning terms) and issues to enable Members to make a planning decision on an application. Case law indicates that Planning Officer reports to his/her Committee are not and should not be intended to provide a learned disquisition of relevant legal principles which repeat each and every detail of the relevant facts to Members of the Committee who are responsible for the decision

~~and are entitled to use their own local knowledge to reach it.~~ Reports to the Planning and Rights of Way Committee should be prepared as follows -

- Reports should be accurate and cover, amongst other things, [a summary of](#) the substance of any objections and the views of those consulted, as recommended by the Public Services Ombudsman for Wales.
- Relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations.
- Reports should contain technical ~~conclusions appraisals~~ which clearly justify ~~a the~~ recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.
- Reports shall be in writing and ~~(where feasible) shall contain up-to-date OS site plans and (where appropriate). Reports~~ shall have a written recommendation of action. Oral reporting ~~of additional information not already included in the report~~ (except to update a report ~~or summarise a late representation~~) should be avoided and carefully minuted when it does occur.

5.3 ~~The relevant Case Officer, or an Officer on his/her/their behalf, shall provide a summary presentation of each non-delegated planning application on the agenda, to include a visual presentation of the site location, plans illustrating the proposals, photographs and any other visual presentations considered appropriate. Officers shall presume that Members have reviewed the non-delegated reports prior to the meeting and thus shall only provide a brief summary of the key matters and recommendation.~~

5.4 ~~Members of the public (and Members who have declared a personal and prejudicial interest in a particular matter) may speak in relation to 'Items for Decision' and notice to speak must be given in accordance with the 'Public Speaking Scheme'. There shall be no public speaking in relation to 'Items for Noting'. Members who have declared a personal and prejudicial interest in a particular matter may still apply to speak under the Authority's Public Speaking Scheme. They are also able to apply to the Standards Committee for Dispensation to Speak (see Members Dispensation Policy for details).~~

5.45 ~~The Monitoring Officer or a suitably qualified alternative. A senior legal officer~~ should always attend the meeting to ensure that procedures have been properly followed.

5.56 ~~The Chairman and Vice-Chairman/Deputy Chair~~ should attend a briefing ~~session~~ with ~~officers-Officers~~ prior to a Committee meeting, to assist the effective conduct of the Committee meeting.

Representations

5.67 Members also have a duty to take into account any representations made to the Authority as a result of consultation with interested bodies or as a result of public notice or neighbour notification. In doing so it is necessary to decide which representations are material to the decision to be made, and, if so, what weight to attach to them. This conclusion should not be reached until all information and argument has been presented and considered.

5.7-8 Care should be taken by Members before introducing new information into the debate at the Committee as that might lead to consideration of a matter being deferred or the committee taking a decision on the basis of information which subsequently proves to be incorrect. Where a Member receives relevant information in respect of an application which is not contained in the Committee report, wherever possible the Member should immediately advise the ~~Head of Development Control~~Director of Planning/Planning and Heritage Manager or the application Case Officer directly so that the information can be taken into consideration before the meeting.

5.89 In the event of a material revision to any planning application being received after preparation of the Committee report the Chair of PAROW and ~~Head of Development Control~~Director of Planning/Planning and Heritage Manager shall consider whether to withdraw the item from the agenda prior to the Committee.

5.910 Where an application proceeds to PAROW and new material information comes to light at the meeting, the ~~Committee~~ may decide:-

- (a) to defer consideration of the application
- or
- (b) delegate the decision following re-consultation.

In other cases, where the ~~Development Control Manager~~Director of Planning/Planning and Heritage Manager considers that it is appropriate to do so, ~~Officers~~ may present new information orally. However, where the information is substantial, it will usually be necessary to defer consideration by the Committee for a written appraisal to be prepared.

5.910 A Member shall decline to vote in relation to any planning application unless he or she has been present in the meeting of the PAROW Committee throughout the full presentation, ~~public speaking and debate and consideration of~~ that particular application. ~~Similarly~~Similarly, a Member shall decline to vote in relation to any planning application that has been the subject of a site visit unless he or she was present at the original PAROW Committee meeting and witnessed the Officers presentation (and Public Speaking presentations where relevant) OR has arranged with the Authority's Monitoring Officer or Director of Planning to view the webcast of the meeting under supervision in the National Park Office at a time to be mutually agreed, provided that no discussion of the planning application takes place during the

Comment [JG2]: Inserted by Governance & Member Development Working Group

viewing. Members must attend the site visit in order to participate and vote on the matter at the relevant PAROW meeting.

Comment [JG3]: Inserted by the Governance & Member Development Working Group

6.0 Decisions Contrary to Officer Recommendations and/or the Development Plan

6.1 The Courts have expressed the view that where a planning committee makes a decision contrary to the eOfficers' recommendation (whether for approval or refusal), such reasons should be based on sound planning considerations. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker.

Comment [JG4]: Officers will elaborate on this during the NPA meeting

6.2 Whenever the Committee is minded to determine a planning application contrary to ~~the e~~Officer recommendation, the Committee must clearly define and list the planning reasons for rejecting the eOfficers' recommendation and then vote on those reasons. The reasons must be recorded in the minutes and the application will be deferred to the next meeting of the Committee in accordance with the following provisions of this Protocol.

6.3 At the subsequent meeting the ~~Head of Development Control~~Director of Planning/Planning and Heritage Manager shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee for not accepting the earlier recommendation. The report shall –

- (a) (where Members are minded to grant permission against a recommendation to refuse) contain draft conditions to be attached to the grant of planning permission and, where appropriate, a recommendation concerning a planning obligation; or
- (b) (where Members are minded to refuse permission against a recommendation to approve) set out formal reasons for refusal reflecting the previous views of the Committee; advise upon the evidence that would be available to substantiate those reasons; and include any other reasons for refusal which the eOfficers consider could be substantiated on appeal.

If the PAROW Committee is still of the same view, then it shall again consider its reasons for not accepting the eOfficers' advice. Those reasons shall then be formally recorded in the minutes of that subsequent meeting.

6.4 Applications which are not in accordance with the development plan must be identified as soon as possible. They must then be advertised as such, as required by

The Town and Country Planning (Notification) (Wales) Direction 2012. Secondly, if it is intended to approve such an application for a notification development' as defined in the above Direction, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan clearly demonstrated. ~~The application may then have to be referred to the Welsh Government.~~ If the eOfficers' report recommends approval the justification for this should be included, in full, in that report.

7.0 Development Proposals Submitted by Members and Officers

- 7.1 Proposals to their own authority by serving and former¹ members and officers and their close friends can easily give rise to suspicions of impropriety. So indeed can proposals for an authority's own development. Proposals can take the form of either planning applications or development plan proposals. In all correspondence and meetings etc, such Members and officers should identify their status.
- 7.2 Serving Members who act as agents for people pursuing a planning matter within their authority must play no part in the decision making process for that proposal. Similarly, should they submit their own proposal to the Authority, they will take no part in its processing and consideration.
- 7.3 Such proposals must be reported to the planning PAROW committee as main items and not dealt with by eOfficers under delegated powers. The same applies to applications etc, made by former Members and eOfficers. Proposals for the Authority's own development will be treated in exactly the same way as those of private developers.
- 7.4 Where there is a proposal from an eOfficer (or from a member of their family or from a close friend), the eOfficer must –
 - (a) inform the ~~Head of Development Control~~Director of Planning/Planning and Heritage Manager when the application is made or as soon as it comes to the attention of the eOfficer;
 - (b) take no part in the decision-making process; and
 - (c) comply with other relevant provisions of this Protocol.
- 7.5 Where there is a proposal from a member (or from a person with whom they live or by whom they are employed or with whom they have a close personal association), or where the member has (for any reason) a prejudicial interest in the matter, then the member must-

¹ 'Former' = those eOfficers and ~~m~~Members who left the Authority less than 12 months prior to the submission of their planning application

(a) inform the ~~Head of Development Control~~ Director of Planning/Planning and Heritage Manager when the application is made or as soon as it comes to the attention of the Member; and

(b) comply with other relevant provisions of this Protocol.

and may-

(c) attend a meeting of the Authority but only for the purpose of making representations in relation to the proposal, provided that the public are allowed to attend the meeting for the same purpose. Having made such representations the member must:

(d) immediately leave the meeting; and,

(e) take no part in the decision-making process; ~~and~~

7.6 Where a Member has a prejudicial interest in a matter (as defined in the Authority's Code of Conduct for Members) the Member shall not approach ~~e~~Officers directly or indirectly or make oral or written representations in relation to the application and shall not seek to influence a decision in relation to it, (for example by seeking to call in an application for consideration by committee rather than under the scheme of delegation) other than as allowed in paragraph 7.4(A) (c) to (e) above.

7.7 Officers within the Authority should not submit applications to the Authority on behalf of third parties except as part of their duties as Authority employees.

8.0 Training and Monitoring

8.1 Members ~~should~~ **must** attend an initial induction and regular training sessions to receive guidance in relation to planning regulations and procedures and on disclosure of personal interests.

Comment [JG5]: Amended by Governance & Member Development Working Group – planning training is mandatory in BBNPA

8.2 The report of the Audit Commission “Building in Quality” recommends that Members should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policies.

8.3 The ~~Head of Development Control~~ Director of Planning/Planning and Heritage Manager shall arrange such reviews.

8.4 Reviews are best undertaken at least annually. They will include examples from a broad range of categories such as major and minor development; permitted

departures; [delegated items](#); upheld appeals; listed building works and enforcement cases. Briefing notes will be prepared on each case. The PAROW Committee will formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

9.0 Complaints / Record Keeping

- 9.1 Whatever procedures a planning authority operates, it is likely that complaints will be made. However, following this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 9.2 A logical consequence of adopting a local protocol of good planning practice is that the Authority should also have in place a robust complaints system. The Authority has a procedure for dealing with formal complaints. It should be remembered that complainants alleging a breach of the statutory local code of conduct are able to direct their allegations in writing direct to the Public Services Ombudsman for Wales.
- 9.3 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be ~~complete~~ [comprehensive](#) and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Authority's case. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was and why and how it had been reached. Particular care needs to be taken with applications determined under ~~e~~Officers' delegated powers, where there is no ~~report-referral~~ to a Committee. Such decisions should be as well documented and recorded as those taken by Members. These principles apply equally to enforcement and development plan matters.