

**TOWN AND COUNTRY PLANNING ACT 1990  
TOWN AND COUNTRY PLANNING (GENERAL PERMITTED  
DEVELOPMENT PROCEDURE) ORDER 1995 - TO DATE  
PLANNING AND COMPENSATION ACT 1991  
TOWN AND COUNTRY PLANNING ADVERT REGULATIONS 1994  
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)  
ACT 1990  
APPLICATIONS FOR PERMISSION FOR DEVELOPMENT**

These are reports and recommendations by Officers for consideration and resolution by the County Planning Authority.

All the applications in respect of the proposals specified in this report will be available for inspection by the Members of the Committee prior to and during the meeting at which the said applications will be considered.

The Background Papers relating to each application, including forms, plans, relevant correspondence, Development Plan and guidance documents are available for public inspection during normal office hours

**ENFORCEMENT MATTERS**

**ENF/2003/0002      Neglect of a Listed Building**

**ENF/2003/0003      Unauthorised signs**

**ENF/2003/0004      Fence over 1 m high adj highway**

COPIES OF APPENDICES AVAILABLE FROM HEAD OF PLANNING SERVICES

REPORT BY HEAD OF PLANNING SERVICES

**SECTION 106 OBLIGATION  
DEVELOPMENT OF OPEN SPACE LAND  
PANT GLAS, ST ASAPH**

**1. PURPOSE OF REPORT.**

- 1.1 To agree the heads of terms of the Section 106 obligation connected to an application for planning permission for development of open space land at the junction of Tan y Bryn and Pant Glas, St Asaph for residential purposes.

**2. BACKGROUND**

- 2.1 At the Planning Committee on 26<sup>th</sup> June 2002 Members resolved to grant planning permission for the development of 0.16 hectares of land for residential purposes subject to the applicants, St Asaph Town Council, first entering into an obligation under Section 106 of the Town and Country Planning Act 1990. Members also requested that I report back to this Committee with suggested heads of terms of agreement having discussed the matter with the Town Council.
- 2.2 The intention of the Section 106 obligation is to ensure that any proceeds obtained from the sale of the open space land for residential purposes is used for public open space and/or recreational facilities within the Community Council area of St Asaph. Members will recall that I recommended refusal on the application but advised that should Members wish to take a contrary view there would be the need for a planning obligation to ensure that any development value was utilised for Community gain. **Attached** is a copy of the original Committee report.

**3. TERMS OF THE OBLIGATION**

- 3.1 Correspondence and a meeting has taken place with representatives of the Town Council and the Town Council has confirmed that they wish to proceed with the obligation in accord with the terms set out below:
- (i) The Town Council is to spend the entire proceeds from the sale of the open space on new or improved open space/recreational facilities within the Community Council area of St Asaph (subject to the deduction of any professional fees incurred in the sale of the land).
  - (ii) The obligation to include a list of potential schemes to receive funding linked to the sale of the open space namely:
    - (iii) Enhancement of the High Street gap site to provide open space
    - (iv) Improved changing facilities on The Roe playing field
    - (v) Skate board facilities within the town
    - (vi) Provision of a trim trail on the open space by the river
    - (vii) The obligation to require the proceeds acquired from the sale of the Pant Glas site to be spent within a specific time period from the sale i.e. 3 years.

**4. RECOMMENDATION**

- 4.1 **It is recommended that the Section 106 obligation be drafted to include the terms set out within paragraph 3 above and that the planning permission be issued**

**once the obligation is completed.**

**PROPOSED 25 TURBINE WINDFARM AT TIR MOSTYN –  
FOEL GOCH, NANTGLYN, DENBIGHSHIRE  
PLANNING APPLICATION CODE NO. 25/710/99/PF**

**INFORMATON REPORT BY THE HEAD OF PLANNING SERVICES**

**1. PURPOSE OF REPORT:**

1.1 The report provides an update on developments in relation to the Nantglyn Windfarm planning application which was granted permission following a Local Inquiry in Denbigh in December 2001 and consideration of the Inspector's report by the Planning Decision Committee of the National Assembly, in July 2002.

**2. BACKGROUND:**

2.1 Members may recall that the planning application was originally submitted to the County Council in September 1999. It was substantially revised between June and August 2000, and was reported for consideration by the County Planning Committee in November 2000.

2.2 The County Planning Committee resolved to grant planning permission, but prior to the issue of the Decision Certificate, the application was formally "called in" for determination by the National Assembly.

2.3 The notification of the National Assembly in July 2002 was that it was minded to allow the application, subject to conditions, and to the submission of a Section 106 Undertaking, signed and sealed by all those with a relevant interest, covering both the application site and the habitat enhancement area for Black Grouse mitigation measures. No certificate of decision was issued, as this could only be released once a satisfactory Section 106 Undertaking was completed.

2.4 Since the Assembly's notification of intent to grant permission in July 2002, representatives of the applicant company, the affected landowners, the National Assembly and other relevant parties have engaged in detailed dialogue over the form and content of the undertaking. A unilateral undertaking has now been completed and signed, and the Welsh Assembly have confirmed their view that the measures in the undertaking provide an effective basis for the County Council to take enforcement action (if necessary) in respect of the Habitat Mitigation Measures therein.

2.5 The Welsh Assembly have therefore confirmed, in a communication dated 19<sup>th</sup> December 2002, the grant of planning permission for the windfarm development subject to the unilateral undertaking, and the planning conditions reproduced as an Appendix to this report.

2.6 Interested parties will be informed of the situation.

**3. RECOMMENDATION**

3.1 That the information report be accepted.

REPORT BY THE HEAD OF PLANNING SERVICES

## CODE OF BEST PRACTICE FOR MEMBERS AND OFFICERS

### 1.0 PURPOSE OF REPORT

- 1.1 To ratify the further clarification sought by Full Council.

### 2.0 BACKGROUND

- 2.1 The Code of Best Practice in Appendix 1 was approved by Full Council on the 19 November 2002 (Minute 729) subject to:

- (a) paragraph 6 (Public Speaking at Committee) be referred to the Modernising Panel for consideration
- (b) officers to clarify which sections refer to Planning Committee/County Council Members
- (c) the following text "*and not as a Member representing the County Council*" be added to the end of paragraph 9.5

### 3.0 AMENDED CODE

- 3.1 Issue of public speaking at Committee will be referred to the Modernising Panel later this year.
- 3.2 Officers have clarified which sections apply to Committee/County Council Members and these appear bold and underlined in the Code appended to this report.
- 3.3 Paragraph 9.5 has been amended.

### 4.0 RECOMMENDATION

- 4.1 **Planning Committee are recommended to accept the text which appears in bold and underlined in Appendix 1.**

# CODE OF BEST PRACTICE

## FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

The revised Code of Best Practice was approved by the Full Council in November 2002 and came into effect on the 1 January 2003.

Reference to "Members" or "Councillors" shall mean all members of the County Council except where specified.

### 1. DEVELOPMENT PLAN PROPOSALS AND PLANNING APPLICATIONS SUBMITTED BY MEMBERS AND OFFICERS, AND COUNCIL DEVELOPMENT PROPOSALS

- 1.1 Members submitting their own proposals or acting as agents for individuals or companies pursuing a planning matter or where a proposal relates to land which they own will take no part in the decision-making process for that proposal.
- 1.2 Planning applications submitted by or on land owned by members or close relatives\* will be determined by the Planning Committee. (\*Close relative is defined as spouses/partners, parents, children and brothers and sisters.)
- 1.3 Planning applications submitted by or on land owned by Officers of Planning Services, Heads of Service, Directors and Chief Executive, or close relatives\* of such officers, will not be dealt with by officers under delegated powers. Such proposals will be reported to the Planning Committee. (\*Close relative is defined as spouses/partners, parents, children and brothers and sisters.)
- 1.4 The Monitoring Officer will be informed of all applications submitted by, or on land owned by members and officers of Planning Services, Heads of Service, Directors and Chief Executive of the council, or close relatives of such officers.
- 1.5 Proposals for the Council's own development except where on Council owned land related to the functions of the Council will be determined by the Planning Committee (or Council in the case of significant departures) and treated in the same way as those by private developers.
- 1.6 Proposals for a Council's own development will be treated in the same way as those of private developers in accordance with DOE Circular 19/92.

### 2. LOBBYING OF AND BY COUNCILLORS

- 2.1 Members **of the Planning Committee** should avoid taking a firm view on a planning matter in advance of the Planning Committee meeting. Members **of the Planning Committee** may form a view or opinion, but should not openly declare which way they

intend to vote in advance of the Planning Committee meeting. Members **of the Planning Committee** should avoid campaigning actively, or going public, in support of a particular outcome. Great care should be taken when calling in an application to be determined by the Planning Committee under Part 2 A (iv) of the delegation scheme. Members **of the Planning Committee** will make the final decision at the Planning Committee after receiving/hearing all the evidence and arguments on both sides and after duly considering the officer's report. **Members not on the Planning Committee will be allowed to address the Planning Committee to convey the views of their constituents on a planning matter with the agreement of the Chair, but like Members of the Planning Committee, should avoid taking a firm view before hearing all the evidence.**

- 2.2 Paragraph 2.1 above is applicable to all Members where applications are determined by Full Council.
- 2.3 Members will not put pressure on officers for a particular recommendation, nor seek to improperly influence a decision likely to compromise their impartiality.
- 2.4 Members who are unsure whether an interest should be declared will seek the advice of the Council's Monitoring Officer.
- 2.5 Members should advise the Ward Councillor as a courtesy in cases where they are seeking to be involved in a development proposal or enforcement issue outside their own Ward.
- 2.5 "Councillors should in general, avoid organising support for or against a planning application and to avoid lobbying other Councillors". (LGA Circular 98/02 para 8.10)

#### **COMMENT**

Lobbying is a 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 Committee. The Nolan Committee accepts that it is essential for the proper operation of the planning system that local concerns are adequately ventilated. However, lobbying can lead to the impartiality and integrity of a member being called into question. When being lobbied, members should take care about expressing an opinion which may be taken as indicating that they have already made their mind up on the issues before they have been exposed to all the evidence and arguments. Councillors should take account of private views and those of wider public interest. They should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so (LGA Circular 98/02, para 5.4). Members should be aware that the planning decision process involves rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly, with the added possibility that an aggrieved party may seek Judicial Review of the way the decision was made, or complain to The Ombudsman on grounds of maladministration.

Members of the Planning Committee should not openly declare which way they intend to vote in advance of the planning meeting and of hearing evidence and arguments on both sides. If the member of the Planning Committee responds to lobbying by deciding to go public in support of a particular outcome the proper course of action for such a member would be to make an open declaration and not vote.



### 3. PRE-APPLICATION AND ENFORCEMENT DISCUSSIONS AND NEGOTIATIONS

- 3.1 Members should, wherever possible, refer requests for advice to officers.
- 3.2 Members and officers involved in pre-application and/or enforcement related discussions with potential applicants should make clear at the outset that the advice is not binding on the Council. Members will state that any views are personal and provisional.
- 3.3 Advice should be consistent and based upon the development plan and material planning considerations.
- 3.4 In pre-application and enforcement discussions, Members and officers will keep notes where they consider a meeting or telephone call is likely to be controversial.
- 3.5 Application and enforcement related negotiations will be conducted by officers. Officers will brief members when appropriate.

### 4. OFFICER REPORTS TO PLANNING COMMITTEE

- 4.1 Officers will produce written reports on all planning applications reported to the Planning Committee.
- 4.2 Reports will cover, among other things:
  - description of the planning application
  - substance of objections
  - views of case officers and those consulted
  - relevant development plan policies
  - site or related history
  - other material planning considerations
  - outcome of environmental statement (where one has been submitted)
  - recommendation
  - the heads of agreement of any recommended Section 106 obligation
- 4.3 Officers will provide written reports on all enforcement matters reported to the Planning Committee. On occasions enforcement reports will need to be presented under Part 2 of the agenda when public and press need to be excluded because of the content of the item.
- 4.4 Reports will be updated orally at the Planning Committee meeting.
- 4.5 If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this will be clearly stated.
- 4.6 Oral reports or written reports handed out at Committee should only take place in exceptional circumstances.

### 5. LATE CORRESPONDENCE

- 5.1 The substance of correspondence received by officers after the committee report has been completed will be reported orally to Members **of the Planning Committee** at the **Committee meeting**, provided the correspondence is received before 5pm on the day before the Committee starts. If correspondence is received after this deadline, including

at Committee, only the receipt of the item will be recorded but a copy will be made available at Committee.

- 5.2 Members **of the Planning Committee or other Members** who read out at Committee or refer to letters received from their electorate/applicant/objector should, as a matter of courtesy, provide an advance copy to officers.

## 6. PUBLIC SPEAKING AT COMMITTEE

- 6.1 Public speaking by applicants, objectors, contraveners, complainants or third parties is not allowed at Planning Committee meetings.

### **COMMENT**

The Council consults widely and currently gives more than the statutory minimum time for responses. It considers that the disbenefits (e.g. legislative meetings, difficulties in managing committee meetings, ensuring fairness and establishing a practical protocol) outweigh the benefits.

## 7. SITE VISITS BY THE SITE INSPECTION PANEL

- 7.1 Site inspection panels cause delay and additional costs and will only be used in exceptional cases where the expected benefit is substantial.
- 7.2 Site inspection panels will be carefully arranged and their composition, format and conduct will follow the 'Guidelines for Site Inspection Panels' approved by The Planning and Economic Development Committee on the 10th September, 1997.
- 7.3 Members **of the Planning Committee** proposing Site Inspection Panels will state clearly why an Inspection Panel should be appointed and how the benefit would be substantial. The reasons should be planning reasons related to the development proposed or enforcement issues reported and should clearly state the physical features on sites or surroundings which requires detailed inspection.
- 7.4 A site visit is only likely to be necessary if **(1)** the impact of the proposed or unauthorised development is difficult to visualise from the plans and any supporting material including photographs; **(2)** the proposal is particularly contentious.
- 7.5 A record will be kept of the reason(s) why a Site Inspection Panel is called.

## 8. PLANNING COMMITTEE DECISIONS

- 8.1 The Chair of the Planning Committee will make it clear for the benefit of members and the public the decision of the Committee following the vote.
- 8.2 Where Members **of the Planning Committee** grant or refuse a planning application against officer recommendation, Members will provide the following particulars at the Planning Committee meeting and the particulars minuted.
- The terms of conditions or heads of the Section 106 Agreement to be attached to the grant.
  - The reason(s) for granting or refusing the planning application.
  - The reason(s) for not accepting the recommendation.

- 8.3 Where members **of the Planning Committee** refuse planning permission against officer recommendation, without justified planning reasons, the Head of Planning Services in consultation with the Monitoring Officer, may report the application back to the next planning committee or Full Council meeting with a covering report dealing with the suitability of the reasons for refusal.
- 8.4 Where Members **of the Planning Committee** decide to take/not to take enforcement action against officer recommendation, Members **of the Planning Committee** will provide the following particulars at the Planning Committee meeting and the particulars minuted.
- The reason(s) why it is / is not expedient to take enforcement action.
  - Where enforcement action is required, the steps to be taken to remedy the breach and the period for compliance.
  - Where enforcement action is not required, give instruction to officers as to what other (if any) action is required.

**COMMENT**

As part of the democratic process, Members **of the Planning Committee** will occasionally make decisions against officer recommendation. Officer reports to the Planning Committee contain the planning justification for the recommendation. It is important when Members **of the Planning Committee** make decisions contrary to the recommendation that the reason(s) for the decision is/are full, clear and carefully minuted.

**9. APPEALS**

- 9.1 Officers will organise and generally appear as witnesses at public inquiry or informal hearing on behalf of the Council.
- 9.2 Officers giving evidence as witness will present the best possible case on behalf of the Council while complying with the RTPI Code of Professional Conduct. The appeal will be conducted in accordance with the agreed procedure as set out in the report on Planning Appeals and Member Involvement approved at Planning Committee on 16th December 1998.
- 9.3 Members **of the Planning Committee** will be required to give evidence at inquiry or informal hearing in appeals where an officer recommendation has been reversed. The Planning Committee shall appoint representatives to give evidence at the hearing/inquiry (normally the proposer and the seconder of the proposal).
- 9.4 In exceptional cases it may be necessary to use Planning Consultants, rather than officers, to present the Council's case. Committee approval will be sought in such cases.
- 9.5 Members should not appear as witness for the appellant or give evidence at appeals on behalf of the appellant. **However, there may be occasions where they wish to support an appellant** in their capacity as local ward members and in doing so, they should declare that they are **expressing their own personal opinion and** acting in this capacity alone **and not as a member representing the County Council or the Planning Committee.**
- 9.6 Local members will receive, for comment, a copy of the Council's proposed Rule 6 statement in Inquiry cases.

### **COMMENT**

The professional responsibility of a Chartered Town Planner as a witness at a local inquiry or informal hearing are governed by The RTPI Code of Professional Conduct which requires member officers to conduct themselves in such a manner as to uphold the reputation of the RTPI and of the planning profession. In particular, it requires that officers do not undertake any duties or carry out any instructions of a public employee or other employee, or a client or supervisor which involves making statements purporting to be their own, but which are contrary to their bona fide professional opinion. Conflicts of interests are likely to occur at an inquiry arising from a decision taken by the Council contrary to a professional recommendation. The advice of the RTPI (PAN4 "*Chartered Town Planners at Inquiries*" and PAN9 "*Development Control - Handling Appeals*") is that officers as witness at an inquiry or hearing are there to give evidence and opinion. This must be true evidence, true to the best of his or her understanding and knowledge. The evidence can be the authority's stated opinion and local opinion. While officers should not volunteer giving information that the case made is at variance with his/her own professional opinion if challenged the officer must give an opinion based on the report to Committee. The RTPI considers that where there are clear differences of opinion which would be detrimental to the Council's case, the planning case officer is unlikely to be the best witness and the Council must accept the consequences of such a revelation. The better alternative according to the RTPI is to call someone else, who is in a position to speak with conviction, e.g. member of the Planning Committee or consultant(s) employed by the Council. Members **of the Planning Committee** will, therefore, be required to appear/present case on behalf of the Council.

## **10. TRAINING AND REVIEW OF DECISIONS**

- 10.1** Members of the Planning Committee will be offered training on the planning process when first serving on the planning committee.
- 10.2** All members will be offered training annually.
- 10.3** Members **of the Planning Committee** will be updated regularly on changes to legislation or procedures.
- 10.4** Officers will arrange for members **of the Planning Committee** to visit a sample of implemented planning permissions and enforcement sites to assess the quality of decisions. These will include examples from a broad range of categories, including delegated decisions. The results will be used to review planning policy guidelines or practices.

## **11. COMPLAINTS AND RECORD KEEPING**

- 11.1** Officers will operate the Council's complaints system.
- 11.2** All reports of alleged unauthorised development and enquiries will be recorded.
- 11.3** All planning applications, including delegated applications, enforcement files, building regulations and development plan files, will contain a written account of events throughout its life.

## 12. INFORMATION

- 12.1 Planning Services will comply with the Access to Information Act and the Data Protection Act.
- 12.2 Members will receive weekly lists of planning applications received.
- 12.3 Local ward members will receive notification of enforcement cases to be reported to Committee and copies of enforcement notices served.
- 12.4 Local ward members will receive notification of appeals lodged and decisions.
- 12.5 Members of the Planning Committee will receive regular enforcement, appeal and planning application progress reports.
- 12.6 Members of the Planning Committee will receive full annual and interim half year performance reports.

**A REPORT BY THE HEAD OF PLANNING SERVICES**

**DATE OF SITE VISITS**

**1. PURPOSE OF REPORT**

- 1.1 To advise Members of the likely date of any Site Visits requested by the Planning Committee.

**2. DATE OF THE SITE VISITS**

- 2.1 In consultation with Legal and Administration, it has been decided that the **Monday 3rd March 2003** is most suitable. This date has been provisionally booked.
- 2.2 You are advised, therefore that any site visits arranged today will take place **On Monday 3rd March 2003**

**3. MEMBERSHIP OF THE SITE VISIT PANEL**

- 3.1 This will depend on Political Balance and will include the Chair and Vice Chair of the Committee and the relevant Local Member(s)

**4. RECOMMENDATION**

- 4.1 **That Members agree to the Site Visits being held on 3rd March 2003.**

**Decisions Made by the Head of Planning Services under  
Delegate Powers  
1st January - 31st January 2003**

**Item For Information**

This is a list of applications where the decision has already been made under delegated powers. If you wish to discuss the application/decision please contact the Case Officer.

**DECISION TYPES**

- GRANT** - grant planning permission
- REFUSE** - refuse all types of application
- APPROVE** - approve reserved matters or condition
- CONSENT** - grant listed building, conservation area, or advert consent
- DEEMED** - does not require advert consent
- NO OBJ** - no objection to works to tree(s) in conservation area
- NOT REQ** - proposal does not require permission/consent
- DETERMIN** - determine that prior approval is not required or is granted on determination application (certain telecom or agricultural works)
- P DEV** - proposal found to be permitted development after receipt
- WDN** - application withdrawn by applicant
- INVALID** - application found to be invalid
- CERTIFY** - Certificate of lawful use issued
- RCERTIFY** - refuse to issue certificate of lawful use