

**PLANNING COMMITTEE  
MEETING - 25th May 2005  
Item: 4**

**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

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**PLANNING COMMITTEE**  
**MEETING: 25th May 2005**  
**Agenda Item: 5**

**ENFORCEMENT MATTERS**

- (i) **ENF/2001/0007 -**  
Ty Isoe, Maes Maelor, Llandegla Nr Wrexham  
Change of use of forestry land to the mixed use of the land for forestry, storage of motor vehicles and for the siting of a caravan for residential purposes
  
- (ii) **ENF/2005/00014 -**  
Land Adjoining 22, Cae'r Odyn, Eryrys  
Erection of fence exceeding 1 metre in height adjacent to highway and change of use of land to form extension to residential curtilage

**PLANNING ENFORCEMENT REPORT**

**REFERENCE:** ENF/2001/00007

**LOCATION:** Ty Isoe, Maes Maelor, Llandegla, Wrexham

**INFRINGEMENT:** Change of use of forestry land to the mixed use of the land for forestry, storage of motor vehicles and for the siting of a caravan for residential purposes

**CONSTRAINTS:**

**1. PURPOSE OF REPORT**

- 1.1 Members authorised enforcement action in respect of this site on the 30 January 2002 and the purpose of this report is to provide an update of the issues relating to this site and to request Member support for the course of actions recommended.

**2. RELEVANT PLANNING POLICIES & GUIDANCE**

- 2.1 DENBIGHSHIRE UNITARY DEVELOPMENT PLAN  
Policy STRAT 1 –General  
Policy STRAT 2 – Waste Disposal / Re-use  
Policy STRAT 6 – Location  
Policy STRAT 7 – Environment  
Policy GEN 3 – Development Outside Development Boundaries  
Policy GEN 6 – Development Control Requirements  
Policy ENV 2 – Development Affecting the AONB / AOB  
Policy HSG 5 – Groups of Houses in the Open Countryside  
Policy EMP 5 – Small Scale Employment Development Outside Development Boundaries  
Policy EMP 7 – Potentially Polluting Employment Development  
Policy MEW 11 – Waste Management Facilities
- 2.2 REGIONAL GUIDANCE  
North Wales Regional Waste Plan – November 2003
- 2.3 GOVERNMENT GUIDANCE  
Planning Policy Wales – March 2002  
Technical Advice Note (Wales) 6 : Agriculture & Rural Development  
Technical Advice Note (Wales) 9: Enforcement of Planning Control  
Technical Advice Note (Wales) 21 : Waste

- 2.4 HUMAN RIGHTS CONSIDERATIONS  
The provisions of the Human Rights Act 1998 were taken into account when enforcement action was considered in respect of this breach of planning control. The owner's rights did not outweigh the objectives of the relevant planning policies and guidance seeking to prevent these types of uses in this location.

### **3. LOCATION AND THE BREACH OF PLANNING CONTROL**

- 3.1 The site is located within the open countryside and within the Area of Outstanding Beauty. The site is on the southerly side of the A525 between the settlements of Llandegla to the west and the Four Crosses to the east and comprises a conifer plantation.
- 3.2 The breach of planning control relates to the storage of over 200 vehicles and associated items and the residential use of a static caravan. There has therefore been a material change of use of the land from forestry to a mixed use of forestry, storage of vehicles and a residential use.

### **4. THE ENFORCEMENT ISSUES**

- 4.1 The reasons for issuing an Enforcement Notice in respect of this breach of planning control were related to the principle of the uses in this location and the harm caused to the character and appearance of the AOB. It was considered that the uses were unacceptable in principle and contrary to the relevant planning policies and guidance specified in paragraph 2 of this report.
- 4.2 On the 30 January 2002 Members authorised the service of an Enforcement Notice as well as the instigation of prosecution proceedings, or other appropriate action, in the event that the owner failed to comply with the requirements of the Notice,
- 4.3 On the 24 June 2002 an Enforcement Notice was served on the owner of the land requiring the owner to:
- "Stop the unauthorised storage of scrap vehicles and residential use of the land and remove from the site all stored motor vehicles, caravans and all other articles associated with these unauthorised uses".*
- 4.4 The owner of the land lodged an appeal against the Enforcement Notice which was dismissed on the 1 April 2003. The owner was required to cease the unauthorised uses of the land and remove all the unauthorised items by the 1 April 2004.
- 4.5 The owner of the land has not complied or shown any intention to comply with the requirements of the Enforcement Notice. The owner is therefore in breach of the Enforcement Notice which is an offence liable to prosecution in the Magistrates' Court.
- 4.6 Whilst Members have previously authorised prosecution proceedings it was considered that given the nature of this breach of planning control, this course of action was not considered appropriate in this instance, as it would be highly unlikely to result in compliance with the requirements of the Notice (i.e. the owner ceasing residential use and removing the unauthorised items from the site).
- 4.7 The Council has been in close liaison with the Environment Agency for over 2 years in respect of the particular issues relating to this site. There are issues relating to this site which are enforceable under the legislation and regulations of the Environment Agency and they have also served notices on the owner, requiring removal of the



motor vehicles and related items from the site. Furthermore, the Environment Agency are pursuing prosecution proceedings against the owner for breaches of their Notices. Following adjournments in the Magistrates' Court due to non-attendance by the owner, the Magistrates' Court agreed to the owner's request that his case be heard in the Crown Court.

- 4.8 The Council and the Environment Agency have agreed in principle, that some form of joint action will need to be taken in order to resolve this matter. This action would involve the Council and the Environment Agency arranging for removal of all the unauthorised items from the site. There would be a cost involved with this form of direct action, but this cost is not yet known. There are provisions within the Planning Act to recover costs, but it may be difficult to recover all of the cost given the nature of this particular case. As part of the intended joint action, Council Officers and Environment Agency Officers, which were accompanied by Police Officers, undertook a site inspection of Ty Isoe on the 12 October 2004, which incorporated a detailed audit of the site.
- 4.9 The Environment Agency's prosecution case against the owner was to be held on the 6 April 2005, but the Judge adjourned the trial until the end of May 2005, in order to give the owner more time to prepare his case.
- 4.10 The Environment Agency cannot take joint action with the Council until such time as their prosecution case against the owner has been resolved. It is therefore considered, at present, that the Council continue to liaise with the Agency, prepare for action and monitor the site. It is also considered that this case be reviewed if it appears that the Agency's prosecution case is unlikely to be resolved within a reasonable period of time.

## **5. RECOMMENDATION**

- 5.1 That Members support the following actions:
- (i) Officers continue to liaise with the Environment Agency with a view to taking joint action to resolve the matter.
  - (ii) The case be reviewed if the Agency's prosecution case against the owner is unlikely to be resolved within a reasonable period of time, in which case the Council will need to consider taking action without the Agency.
  - (iii) That this case be reported back to Members for support and to confirm the details and estimated cost relating to (i) and (ii).

**PLANNING ENFORCEMENT REPORT**

**REFERENCE:** ENF/2005/00014

**LOCATION:** Land Adjoining No. 22 Cae'r Odyn Eryrys Mold

**INFRINGEMENT:** Erection of fence exceeding 1 metre in height adjacent to highway and change of use of land to form extension to residential curtilage

**CONSTRAINTS:**

**RELEVANT PLANNING POLICIES AND GUIDANCE**

DENBIGHSHIRE UNITARY DEVELOPMENT PLAN  
Policy GEN 6 – Development Control Requirements  
Policy ENV 2 – Development Affecting the AONB / AOB  
Policy ENV 7 – Landscape / Townscape Features  
Policy HSG 16 – Extensions to Domestic Gardens

**GOVERNMENT GUIDANCE**

Planning Policy Wales – March 2002  
Technical Advice Note (Wales) 9 – Enforcement of Planning Control

**HUMAN RIGHTS CONSIDERATIONS**

The provisions of the Human Rights Act 1998 are taken into account when considering taking enforcement action against unauthorised development of land and related matters. In this instance the matters under consideration relate to the contravener's right to erect a fence exceeding 1 metre in height adjacent to the highway and to change the use of land to form an extension to the curtilage area. In this instance it is considered that these rights do not outweigh the relevant planning policies which seek to ensure that developments do not adversely impact on the character and appearance of the Area of Outstanding Beauty (AOB). No specific human rights issues have been raised by the contravener or any other person with an interest in the land.

**1. BACKGROUND INFORMATION**

- 1.1 This breach of planning control relates to part of a grass verge which adjoins the garden of 22 Cae'r Odyn and fronts onto Ochr y Foel and which is located within the AOB, with the AONB lying immediately to the north.
- 1.2 In June 2004, following investigations into other breaches of planning control in this locality, it was noted that an area of approximately 35 square metres of the grass verge adjoining 22 Cae'r Odyn had been enclosed with a timber fence of approximately 1.8 metres in height. It was also noted that this area of the grass verge was being used as an extension to the garden area of 22 Cae'r Odyn.

- 1.3 The owners of 22 Cae'r Odyn have been formally advised that the erection of the fence and the use of the land as garden area required planning permission. It was also advised that a retrospective planning application would not be likely to receive planning permission, given the adverse impact on the appearance of the AOB and that the fence should therefore be removed and the use of the land stopped.
- 1.4 The owners of 22 Cae'r Odyn have indicated no intention to voluntarily remedy this breach of planning control and this report therefore seeks Member authorisation to take enforcement action for the reasons specified.
- 1.5 It is also advised that Members authorised enforcement action in respect of an unauthorised fence at 5 Ochr y Foel, which is opposite this site and that an Enforcement Notice was served in November 2004 requiring removal of the fence or for its height to be lowered to 1 metre or less.

## **2. REASONS FOR ISSUING AN ENFORCEMENT NOTICE**

- 2.1 The unauthorised fence was erected within the last 4 years and the unauthorised change of use commenced within the last 10 years.
- 2.2 The fence due to its size, prominent position, design and appearance has an adverse impact on the character and appearance of the cul-de-sac (Ochr y Foel) and the Area of Outstanding Beauty, which is contrary to Policies ENV 2, ENV 7 and GEN 6 of the Denbighshire Unitary Development Plan.
- 2.3 Enclosing and using this area of the grass verge as domestic garden area due to its size and siting has an adverse impact on the character and appearance of the cul-de-sac (Ochr y Foel) and the AOB and would be likely to lead to the potential for further unacceptable development of a similar nature which would be contrary to Policies ENV 2 and HSG 16 of the Denbighshire Unitary Development Plan.
- 2.4 The imposition of planning conditions as part of any grant of planning permission would not overcome these objections.

## **3. RECOMMENDATION**

- 3.1 That authorisation be given for the following:
  - (i) Serve an Enforcement Notice to secure the removal of the fence and for the use of the land as garden area to stop.
  - (ii) Instigate prosecution proceedings, or other appropriate action under the Planning Act, against any person, or persons, upon whom any Enforcement Notice, or other Notice is served, or against whom legal action is taken should they fail to comply with the requirements of the Enforcement Notice.

**REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION**

**ROAD NAMING AND ROAD NAME PLATES IN LLANFERRES**

**1. PURPOSE OF REPORT**

1.1 To seek a member decision on the request to the naming of roads between the A494 at Llanferres and the Village of Maeshafn and the erection of road name plates to the roads affected by members decision (see attached map)

**2. BACKGROUND**

2.1 The Council have received a request from one of the occupiers of a property located in Road A known historically as Tyn y Ynn, for the road to be re-named Tyn-yr-Ynn Lane. The request has been made on behalf of the owners of all five properties on this road as a result of mail being delayed or going astray, parcel carriers being unable to deliver packages and further an instance where during a period of serious illness, an ambulance was delayed in getting to the property.

2.2 In these circumstances, the occupiers of Road A further request that a road name plate be erected at the end of the road and a road name plate be erected for Road B at its entrance from the A494 road. Road B is known, historically, as Pont y Mwynwr Road, however, known by some residents as " Village Road " and it is this name for which the request has been made for the erection of a name plate.

2.3 The current policy on street naming and numbering agreed by the Planning Committee in February 1997 is specifically applicable to roads forming part of new developments and not for the purposes of re-naming existing roads.

2.4 Officers normally have delegated powers to determine street or road naming but because of the nature of the request, its lack of precedent and the objections received, have referred the matters to members for a decision.

### **3. RESPONSE FROM CONSULTEES.**

3.1 Llanferres Community Council have been consulted in respect of each of the requests and have responded that they would prefer the “old historical “ names be retained and are strongly opposed to the erection of road name plates anywhere in the villages within the Area of Outstanding Natural Beauty. Further, the Community Council have consulted with Maeshafn and District Rural Association (MADRA) who have subsequently registered their own objection to the re-naming of the roads on the same grounds.

### **4. RECOMMENDATION**

4.1 That the historical names for both roads be retained and that road name plates should not be erected.

**REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION**

**PLANNING COMMITTEE PROCEDURES**

**1. PURPOSE OF REPORT**

- 1.1 To confirm with Members the details of revisions to Planning Committee procedures following approval of the changes at Full Council on 12<sup>th</sup> April 2005.

**2. BACKGROUND**

- 2.1 On 12<sup>th</sup> April 2005 Full Council approved recommendations set out in reports to Environment Scrutiny and Corporate Governance Committees, in addition to agreeing procedures for Member involvement with planning applications.
- 2.2 Confirmation is required as to the detailed changes to the affected procedures, namely the Delegation Scheme, Guidelines for Site Inspection Panels, and Code of Best Practice for Councillors and Officers Dealing With Planning Matters.
- 2.3 The relevant procedures, are set out in the appendices to this report:

**Appendix A – Delegation Scheme**

**Appendix B – Guidelines for Site Inspection Panels**

**Appendix C – Code of Best Practice**

**3. CONTENTS OF REPORT**

- 3.1 Whilst reporting on Planning Committee procedures, one point requires agreement from Members. Current practice on applications for new agricultural dwellings is to include as a Part II item on the agenda the ADAS report. Comments have been made by some Members as to whether this is necessary, given that a summary of the findings of the ADAS report is contained within the main body of the report. In addition, if any Member wished to study the details of the ADAS report, this could be arranged through officers, having regard to the confidential nature of parts of the ADAS report (personal and financial information). Other background papers are not included as part of reports on planning applications, and therefore to be consistent, it is recommended that the practice of including ADAS reports as a Part II item is no longer followed.

#### 4. RECOMMENDATION

- 4.1 That (i) the detailed wording of the Delegation Scheme, Guidelines for Site Inspection Panels, and the Code of Best Practice as set out in **Appendices A, B and C** are agreed by Members for implementation forthwith and (iii) ADAS reports are no longer included as a Part II item on the agenda.

# SCHEME OF DELEGATION

**This revised scheme was approved by Full Council in April 2004 and came into effect on 13 April 2005.**

The scheme is in three parts. Part 1 sets out what the Head of Planning and Public Protection and/or Development Control Manager can do subject to checks and balances in Parts 2 and 3. Part 2 sets out under what circumstances the Head of Planning and Public Protection and/or Development Control Manager cannot exercise decisions. Part 3 sets out decisions that must be taken by Full Council.

**\*"Close relative" is defined as spouses/partners, parents, children, brothers and sisters.**

## PART 1

The scheme shall authorise the Head of Planning and Public Protection and/or the Development Control Manager to:-

- (1) determine all types of applications and notifications under the Planning Acts and allied legislation, including (i) householder development (development within the curtilage of a single dwelling house), where no more than 3 letters of objection from different neighbours have been received raising material planning objections and subject to the development complying with the Unitary Development Plan/Local Development Plan and approved Supplementary Planning Guidance and (ii) notifications and determinations, where material planning objection(s) has/have been received.
- (2) determine building plans, certificates and notices, service notices under the Building Act and Regulations and allied legislation
- (3) submit observations on development proposals for example from neighbouring authorities, exempted organisations, etc.
- (4) resolve all planning and building regulation enforcement related cases by serving statutory notices as necessary or by taking no further action in accordance with the Committee approved, "Enforcement Policies and Procedures" document and instigate prosecution proceedings
- (5) to determine the name and numbering of streets subject to prior consultation with local ward member(s) and no adverse views expressed. [Note : naming delegated to Town and Community Councils in some instances]
- (6) instigate the Emergency Powers provisions in Enforcement related cases where extremely urgent formal action is deemed necessary. This will allow for the service of any Enforcement related statutory notice including stop notices and temporary stop notices and seek an injunction subject to prior consultation with the local Ward Member(s) who agree on such action as recommended by Officers. The following signatures will be required in all cases - the Corporate Director of Environment or the Head of Planning and



Public Protection, the County Clerk or the Legal Services Manager and Chair or Vice Chair of the Planning Committee

- (7) take all necessary ancillary decision/action in exercising statutory planning and building control functions including determining the need for Environmental Impact Assessments and acting on Committee or Full Council resolutions
- (8) determine applications for grant aid under approved schemes
- (9) decide the type of appeal subject to Members being consulted and defend the Council's position at appeal or court of law
- (10) submit observations on consultations on draft documents
- (11) serve the relevant notices and instigate prosecution proceedings in respect of fly posting, advertisements, untidy land (Section 215), trees and listed buildings, including discontinuance notices, building preservation notices, tree preservation notices and trees in conservation areas, and high hedges.

## PART 2

The Scheme shall not authorise the Head of Planning and Public Protection and/or the Development Control Manager to:

### A DETERMINE ALL TYPES OF PLANNING APPLICATIONS

- (i) on which a material planning objection(s) including those from Town/Community Councils and statutory consultees) has been received in the stipulated time span, which is recommended contrary to objections, other than were allowed for by Part 1 (1)
- (ii) contrary to the provisions of an adopted development plan, and which is recommended for approval;
- (iii) contrary to approved Council policies, standards or guidance, and which is recommended for approval;
- (iv) ***that a Member requests Committee consideration in writing or by e-mail to the Head of Planning and Public Protection and/or the Development Control Manager, within 21 days of the circulation of details of the application, subject to:***
  - 1. the application lying within their electoral division or is a significant application that has an impact on their electoral division;***
  - 2. planning reasons being given for referral to the Planning Committee;***
- (v) submitted by or on behalf of a Councillor of the authority, Planning Staff, Heads of Service, Director, Chief Executive or their close relative.
- (vi) submitted by or on behalf of the Council for development except where on Council owned land related to the functions exercised by the Council.

- (vii) to refuse applications which are retrospective when enforcement action is also recommended unless the enforcement action is delegated to officers by this scheme i.e. Listed building consent and advertisement applications;
- (viii) relating to land in the ownership of a Councillor, Planning Staff, Heads of Service, Director, Chief Executive, or their close relative;
- (ix) where in the view of the Head of Planning and Public Protection and/or the Development Control Manager material planning issues in support of the application has been raised by consultees or third parties which warrant consideration by the Planning Committee;
- (x) remove or vary a condition previously imposed through a resolution of the Planning Committee additional to those recommended by Officers;

## **B RESOLVE ENFORCEMENT RELATED CASES**

- (i) by instigating prosecution proceedings for failure to comply with an order or notice except in those cases listed in Part 1
- (ii) by serving the following enforcement related statutory notices unless the Emergency Power provisions have been instigated
  - Enforcement Notice (other than enforcement notices related to breach of condition)
  - Special Enforcement Notice
  - Stop Notice and Temporary Stop Notice
  - Urgent Works Notice
  - Repairs Notice
  - Legal Injunction
- (iii) take no further action on enforcement related case that have generated 5 or more complaints from separate addresses in the locality

## **PART 3**

### **DECISIONS RETAINED BY THE FULL COUNCIL**

- (i) Planning applications or other applications which constitute significant departures from the adopted development plan where the Planning Committee have resolved to grant permission. Significant departures constitute:
  - (a) those proposals which have little or no justification under the terms of the adopted development plan e.g. new dwellings in the countryside unrelated to agricultural need, and
  - (b) other proposals which are clearly not allowed for by the adopted development plan but where other material considerations justify a departure e.g. economic benefits

- (ii)** Final approval of policies and proposals to be included in the development plan or any modification or review thereof.
- (iii)** Applications which if refused or approved with conditions attached or a decision on an enforcement matter that would be likely to result in a successful award of costs against the Council at appeal

**GUIDELINES FOR SITE INSPECTION PANELS**

**A. PURPOSE OF SITE INSPECTION PANELS**

- (i) To enable a panel of Members and a local county representative to examine proposals in the context of a site visit. Panels should be used selectively, where the information cannot, or would be unlikely, be gleaned from the Committee report, and supporting information including Committee displays.

**B. THE APPOINTMENT OF SITE INSPECTION PANELS**

- (i) To empower the Planning Committee or Chair of the Planning Committee to appoint Site Inspection Panels to investigate and report back on any planning applications or enforcement matter reported, or to be reported, for determination by the Head of Planning of Planning and Public Protection to the Planning Committee. Members shall give a clear indication of the planning grounds for requesting a Site Inspection Panel, in each instance.

**C. THE COMPOSITION OF SITE INSPECTION PANELS**

- (i) The membership shall consist of the Chair and Vice-Chair of the Planning Committee (or substitutes approved by the Chair) together with the Local Member(s) for the electoral division in which the application site lies and a representative of the local Town/Community Council.

**D. PRE-COMMITTEE SITE INSPECTION PANELS**

- (i) The Panel can be appointed in advance of the Planning Committee. The following guidelines apply:
  1. The request to be made by letter or e-mail by a Member to the Development Control Manager at least 7 working days before the Committee. The request would be based on the list of potential items for Planning Committee circulated 3 weeks before the Committee.
  2. The request to include clear planning grounds for requesting a panel in each instance.
  3. The Development Control Manager to consult with the Chair of Planning Committee before deciding whether a pre-committee site visit is necessary.
  4. The Member to be advised of the decision at 3. and the reasons for it.

5. Pre-Committee site inspection panels normally to take place in the week preceding the Planning Committee, by arrangement with the Chair and panel members.

## **E. PROCEDURES AT SITE INSPECTION PANEL MEETINGS**

- (i)** If the Committee Chair is absent, Members shall agree on the acting Chair (this shall be the elected Vice Chair if present).
- (ii)** The Chair shall formally open the meeting and set out the reasons for appointing the Panel.
- (iii)** The Planning Officer shall be requested to outline the proposal or the breach of planning control and main issues and indicate what members should look at taking into account the reasons for appointing the panel. The Officer shall advise the panel of whether it is considered necessary to view the proposal from adjoining land / properties and of any requests from neighbouring occupants to view the relevant site from their land / properties.
- (iv)** The Site Inspection Panel shall view the site, relevant buildings and surroundings as necessary.
- (v)** Members shall be offered the opportunity to raise questions or seek clarification of points of fact with the Planning Officer and/or local member(s) and/or Town/Community Council representative.
- (vi)** The Local Member(s) and representative of the Town/Community Council shall be offered the opportunity to comment on the proposal.
- (vii)** Members of the Site Inspection Panel shall be offered the opportunity to comment on the proposal or breach of planning control and to debate issues.
- (viii)** At the conclusion of the debate, the Chair shall invite members to agree on matters of fact relating to circumstances on site and the reasons for appointing the Panel.
- (ix)** The Planning Officer shall be responsible for taking notes and for preparing the notes of the Panel's meetings for the Planning Committee to consider. These notes shall include the reasons for appointing the panel, a record of those present, an outline of what was considered, and members conclusions on points considered. If the Panel meets between the completion of the Planning Committee report and the Committee itself, the notes shall be incorporated in the Late Representations Addendum Report.
- (x)** **Other Members** - No Members other than those appointed onto the Site Inspection Panel shall attend the panel.

- (xi) The General Public/Applicants/Agents** - No members of the public, applicants or their agents, shall be permitted to take part, attend, address or to observe the proceedings of any Site Inspection Panel meeting. In exceptional circumstances, where it is necessary for the Site Inspection Panel to inspect / enter onto buildings or land in the presence of the owner/applicant/neighbouring occupier that person shall be advised at the outset of the meeting that he/she is not able to take part in any of the proceedings of the meeting, other than to answer any factual questions put through the Chair. The owner/applicant/neighbouring occupier shall be asked to leave the presence of the Site Inspection Panel prior to any comment or debate on a proposal.
- (xii) Hospitality** - Members of a Site Inspection Panel should not accept any form of hospitality which might be considered as having an influence on the decision making process.
- (xiii) Confidentiality** - The comments made by Site Inspection Panel shall remain confidential until the notes of the meeting are published in the following Planning Committee report or Addendum Report. This does not prevent Members passing on informal comments about their findings on site to other Members.
- (xiv) Timing** – The Panel would normally spend no more than 15 minutes at a site, other than at the discretion of the Chair who may allow a maximum of 30 minutes on larger sites.

# **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 April 2005 and came into effect on 1 June 2005.

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 Planning Staff, 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 Planning Staff, 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.
- 2.6** "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.

- 2.7** Members, who are also Town/Community Councillors, (or members of other bodies involved in the consultation process on planning applications) must not openly declare or take a firm view on a planning matter in advance of the Planning Committee meeting.



However, Members may still participate in Town/Community Council meetings or other meetings discussing planning matters and provide comment, subject to these provisos.

### **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 by an addendum report 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 up will be reported in an addendum report 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, supporters and objectors on planning applications, is allowed at Planning Committee meetings. The details are included in the protocol for public speaking – *Have Your Say About A Planning Application*.

## **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 Committee on the 25 May 2005.
- 7.3** Members 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 and Public Protection 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.
- 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 of the Planning Committee will undertake training on planning issues and are required to attend a minimum of 2 no. training events per annum to allow continued membership of the Planning Committee. Officers will arrange 4 no. training events per annum.
- 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 Freedom of Information Act and the Data Protection Act.
- 12.2** Members will receive weekly lists of planning applications received.
- 12.3** Local ward member(s) will receive notification of enforcement cases to be reported to Committee and copies of enforcement notices served.
- 12.4** Local ward member(s) will receive notification of appeals lodged and decisions.
- 12.5** Members of the Planning Committee will receive regular enforcement and appeal progress reports.

**REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION**

**TWEEDMILL APPEAL**

**1. PURPOSE OF REPORT**

- 1.1 To advise Members of the recent appeal decision relating to Tweedmill and to summarise the main findings of the Inspector.

**2. BACKGROUND**

- 2.1 Planning permission was refused in September 2004 for an extension to the factory outlets operation at Tweedmill. The decision of Members was contrary to the advice of officers.
- 2.2 An appeal into the decision was considered at a Public Inquiry between 8<sup>th</sup> and 10<sup>th</sup> February 2005. At the inquiry the Council was represented by an experienced Planning Barrister, a Retail Consultant, and the Development Control Manager. The appellants were represented by a QC, and planning and transport witnesses. A business consultant represented local traders and a number of other interested persons spoke at the inquiry, including 2 no. local M.P.s.
- 2.3 In accordance with planning procedures, 2 no. County Councillors, Bob Barton and Mike German, were nominated by the Committee to represent the Council at the inquiry. Both Councillors submitted proofs of evidence. However, taking into account strong advice from the Council's barrister, the County Councillors were not called to give evidence.
- 2.4 No applications for costs were made at the inquiry.

**3. INSPECTOR'S DECISION**

- 3.1 By decision letter dated 31<sup>st</sup> March 2005, the Inspector allowed the appeal subject to 15 planning conditions and a unilateral undertaking by the appellants to provide contributions towards improved bus services in the locality.
- 3.2 The Inspectors reasoning in relation to the main issues can be summarized as follows:
- i) The use is that of a shop and the proposals must be considered against the retail policy framework.
  - ii) The proposal requires very specific justification as out of town retailing.

- iii) Tweedmill, as a single site operation, is unusual if not unique in North Wales.
- iv) There is a quantitative and qualitative need for additional non-food floor space and the extension would not have an unacceptable harmful effect on the vitality and viability of nearby centres.
- v) Of the sequentially preferable sites discussed at the inquiry, the only site which the Inspector considered may become available in the near future was that to the east of High Street, Prestatyn. However, he expressed doubts as the site being available for Tweedmill due to the competing aspirations of national retailers and doubt as to whether Tweedmill would be able to afford the likely rental levels or be a first choice tenant of the potential developers. He thus concluded the consideration of an out of town site was appropriate in this instance.
- vi) In relation to accessibility and sustainability, he concluded that on site improvements and the contribution towards bus services would improve the sustainability of the site compared to the existing situation.
- vii) The Inspector saw potential benefit of the proposal for the wider area, given the attraction of Tweedmill to a significant number of customers from outside the immediate shopping catchment, including tourists (day visitors and holiday makers).
- viii) In conclusion he stated as follows:  
*"Having identified that there would no unacceptable harm in respect to the main issue in this case, I consider that the benefits of this particular proposal outweigh the harm to the objectives of UDP policy."*

#### **4. OFFICER COMMENT**

- 4.1 It is considered that the Council offered a robust defence to the decision of the Planning Committee but having considered all the evidence, in particular the specific characteristics of the operation, the Inspector supported the proposal. As the Inspector commented, this should not be seen as a precedent for out of town retail development generally.
- 4.2 However, and as stated previously following the showground car boot sale appeal, the absence of available, sequentially preferable sites in town centres is a weakness that needs addressing urgently, and reinforces the need for the Council to work proactively, in collaboration with bodies such as the Welsh Development Agency, and the private sector, to bring forward town centre sites. This could include the use of compulsory purchase powers as a last resort, as being utilized in Prestatyn Town Centre.

**THIS REPORT IS FOR MEMBERS INFORMATION**

**A REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION**

**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 County Clerk's Department, it has been decided that Wednesday 1st June 2005 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 **Wednesday 1st June 2005**

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

- 3.1** The membership of the Site Panel will be:  
The Chair and Vice Chair, the Local Member(s) and a representative of the relevant Town or Community Council

**4. RECOMMENDATION**

- 4.1** That Members agree to the Site Visits being held on **Wednesday 1st June 2005**



**PLANNING COMMITTEE  
MEETING: 25th May 2005  
ITEM: 10**

**Decisions Made by the Head of Planning and Public Protection  
under  
Delegated Powers  
1st - 30th April 2005**

**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**

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