

NORTHERN IRELAND COUNCILLOR TRAINING

INTRODUCTION

Thanks for the invite to participate in this important series of seminars.

I am a strong supporter of the decision to transfer most planning policy and decision making, including enforcement, to local councils. These powers undoubtedly bring challenges but they also provide greater opportunities for Councils to shape the future of the communities in your area.

BACKGROUND

I was Chief Planner with the Scottish Government for 12 years before retiring in 2012. I did work for 5 years in a Scottish Local Authority and have considerable experience dealing with local authority officials and councillors. In addition to the normal round of meetings, workshops and seminars I set up an audit team to look at the ways in which councils delivered their planning service and also instigated annual meetings with Convenors of Planning Committees. These were invaluable and I suggest that you should be pushing for something similar in NI with DOE officials and Ministers.

I have also some experience of planning in NI through the frequent contacts I had with colleagues in Belfast, indeed I was a critical friend to the Board of the Planning Service. To be honest I often felt more of a critic than a friend. More recently I was asked by the Chief Executive of Belfast City Council (BCC) to advise on the transformation of the planning service in the city.

In relation to propriety and ethics on planning, there is no real difference between central and local government. The key points are essentially the same:-

- Do not express an opinion for/against a particular proposal until you have all the information/views before you. At Committee or Council meeting where the decision is taken you can argue for or against a proposal with passion and commitment. But if you express a view in advance you cannot be part of the formal decision making.
- Some of you may have been elected because you are in favour or more likely opposed to a particular development. That does not mean that you cannot sit on a Planning Committee but you

cannot take part in the decision relating to a proposal on which you have specifically campaigned (*PS I don't see any problem in taking a decision on an application related to a particular policy area on which you might have expressed a view, for example zero waste, renewable energy, rural housing. Not though if you have said something on the lines of "over my dead body would I vote for/against....."*)

- Be careful about the individuals and organisations with whom you meet and when you meet them – by all means meet people, listen to what they have to say but have the meeting recorded, ideally by an official.
- Be scrupulous about declaring an interest; if in doubt seek clarification.

One of the big differences between central and local government in Scotland was that our Ministers were debarred from taking planning decisions in their own constituencies. Indeed they were not given sight of the advice/recommendation from officials in relation to cases within their area. Another difference was the Planning Minister – not a Committee – took a decision on behalf of all Scottish Ministers.

Code of Conduct

You now have a copy of the Councillors Code on Planning and we have a practical exercise later on so I won't go in to that in any detail now. I assume that you have also seen the Protocol for the Operation of Planning Committees.

My starting point is that the Code and the Protocol contain much useful, indeed invaluable, guidance. The Code is there to support and protect you in carrying out your planning duties and responsibilities. It is also helpful in explaining to developers, individuals and communities the ethical framework within which councillors must operate. So the Code plays a key role in establishing and maintaining public trust and confidence in the planning system

Politicians and Planning

Planning is about making policy and taking decisions about the future use of land and buildings in the long term public interest. That should sit well with the interests of members as politicians generally seek election

to make things better— however you define that – for the communities they serve but it doesn't always, essentially because there are differences of views on long term (an upcoming election may result in some councillors taking a different perspective) and public interest (a waste disposal plant might be essential but not here, not in my ward, you might support the drive for renewable energy but no wind farms in my area, please).

The key point is that members of a planning committee must act in the public interest – not in the interests of individuals, particular neighbourhoods/sectors or other loyalties.

Relations between planners and politicians are not always easy. The planning process embraces questions of balance and judgement with infinite shades of grey, so it's not like advice from say a structural engineer or a building inspector. But the decisions are black or white, yes or no.

The approach by some planners don't always help foster good relations. Some see the development plan as their plan, the policies which they have worked hard to draft and edit as their policies, recommendations/decisions as balanced, rational, even handed, based on a thorough understanding of procedure and policy and the application of professional knowledge. Some will have concerns about the considerations that councillors will take in to account.

There is an understandable, arguably inevitable, tendency for public, political and media interest to focus on particular cases or policies. That will not go away but I think councillors should also look at the way the system and service are operating in their area. The schemes of delegation should help councillors focus on significant or substantive issues not what are little more than neighbour disputes. Did you really get involved in politics to resolve arguments over fences, dormer extensions, hours of opening of a hot food shop?

In Scotland there are clear advantages to councillors in having a liberal scheme of delegation. The advent of Local Review Bodies means that more decisions, including appeals are made locally. Lots of concerns about decisions being taken away from the Scottish equivalent of the PAC and handed to local members but I believe it has been a success. It has certainly not had the dire consequences that some predicted and the councillors who are members of LRBs have conducted themselves extremely well.

There are 4 elements to the quality of the planning service of which you need to be aware:-

- Efficiency
- Inclusion
- Effectiveness
- Integrity

Let's take these in turn. The planning service you inherit from the DOE does not enjoy a reputation for **efficiency** and I believe that councillors need to look at this issue. A quick decision is not necessarily a good one; that is equally true of a slow decision. But some of the delays are unacceptable and are borne out of established practices – lack of understanding of implications of delay (householder/developer); lengthy reports; too many conditions; unnecessary legal agreements. Move to processing agreements on major planning applications. These agreements which are essential project management tools allocate obligations but also responsibilities.

The City of Edinburgh Council has an award winning concordat with the development industry setting out general rules of engagement between the parties. That is certainly worth considering.

My starting point on **inclusion** is that there are more opportunities for public involvement in planning, guaranteed by statute, than any other area of public policy. But individuals and communities may tell you that the planners don't listen; well they do but that doesn't mean they agree. Developers will tell you that the process is glacial and unpredictable. True in some cases but there are many examples where delays and confusion can be laid at the door of the applicant.

What has been useful in Scotland is for members (and officials) holding say 6 monthly meetings with community/environmental groups and developers to listen to and respond to their concerns away from the tensions around individual cases. Some of these you can predict but some you can't and some can be easily fixed, for example ease of telephone contact, delays in registering applications, etc

I have used the term **effectiveness** rather than sustainable development as this invariably leads to a philosophical but inconclusive discussion about what is sustainable. What I mean by effectiveness is whether the planning system and the planning service are doing what the council expects. I have done some work for Belfast City Council which is based on the premise that planning – both the system and the service - has not fulfilled its potential; that its role is regulatory rather than promotional and

the Chief Executive wants to see a transformed service. So is planning performing for your area? If not, why not and what is to be done?

The 4th point is about **integrity**. Whatever criticisms are levelled at the current planning service and some may be perfectly valid, the officials who operate the service have an enviable and well-deserved reputation for honesty and integrity. This feature has to be maintained in the new arrangements.

KEY ISSUES

I should now like to turn to 3 important issues which need to be teased out a bit more:-

- Role and Status of Development Plan
- Appeals
- Enforcement

The aspiration throughout the UK is that we should have a plan led system with predictable decisions based on what is contained in the development plan. But we do not have legally binding plans as is the case in many parts of western, particularly northern Europe. In Germany a Bebauungsplan set out building lines, heights, access points, landscaped and play areas, is binding on land owners and public authorities; you cannot approve a proposal that departs or reject an application that accords with the plan. Plans in the UK are not binding in that sense. Important, yes but you have to take “other material considerations” in to account.

The law states that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. That gives the development plan an enhanced status but it is still not binding on decision makers; there is flexibility to depart from the provisions of the plan. A judgement from the House of Lords sets out the process decision makers should follow

That judgement makes it clear that as decision makers you **must** first consider the policies and proposals in the development plan. Many of the applications you consider will be more finely grained than the plan; or new issues might have arisen; or in the case of so many plans, you can find policies which support an application and others that do not. Also in the case of too many development plans, finding the relevant policies can be quite a challenge.

The statutory development plan or plans that you have inherited are long in the tooth. Some have only recently been adopted (and only run for

the course of 2015) but they have been in preparation for a decade or more.

But, as important or even more important, they are not your development plan or plans. They are the DOE's. That's not a criticism, just a statement of fact.

Please do not think that I am suggesting that the policies in the development plan can be set aside lightly, but you have to take in to account "other material considerations". In some cases these will outweigh the policies in the development plan – either to grant or refuse permission. In practice material considerations are very wide but they have to be related to proper planning issues and must not be frivolous, malicious or vexatious.

You must, though, guard against consistently setting aside the policies in the development plan. That creates a lack of certainty and makes planning decisions seem whimsical or capricious or irrational, even bonkers. Not a good thing. Certainty and predictability matter – both to the development industry and to local communities.

So what do you do if you find yourselves in a situation where you have little or no confidence in the development plan for your area? Prepare a new one which reflects the aims and aspirations of the Council. But that takes time, not I hope the 12 years that BMAP took but possibly 3 – 5 years.

A leading planning lawyer in Scotland accused planners of being in leisurely pursuit of a future rapidly accelerating away from them. Arguably true, just a bit rich coming from a lawyer!

The late Donald Dewar described Scotland a disputatious nation. This applies equally in NI but you also appear to be a litigious nation on planning which I think has driven a degree of caution, uncertainty and conservatism in to the system and service

My advice is to prepare a non-statutory plan. It can be prepared much more quickly than a statutory plan – I believe that 12 months is possible - and be the subject of focused engagement with local communities. It won't have the status of a statutory plan but it will be more up to date and carry the weight of endorsement by the new council. It should be your plan, not your officials'. It will be a very important material consideration in planning decisions.

Turning now to **appeals**. From my reading of the Code and the Protocol they do not say much, if anything, about the implications of an appeal

where members have overturned the recommendation of officials. Guidance may be in other documents. Well you can't expect officials to turn up at a public inquiry or in court and defend the decision as if it was their decision. When they are asked what was their recommendation based on their professional judgement, they cannot exercise a hand brake turn.

So are Councillors on their own? Well, not quite. While Councillors have to give valid planning reasons for your decision, officials can help with the precise wording of these and can also assist with drafting written statements on your behalf.

But if you get a run of decisions from the PAC which overturns the Council's decision and awards costs to the appellant, you need to reflect on the implications.

Enforcement – often referred to as the Cinderella part of a Cinderella service. The issues are very commonly exaggerated and misrepresented. Enforcement rarely involves the doughty wee man against the might of the multi-national company. Many enforcement issues stem from neighbour disputes and most are resolved by a telephone call, a meeting or an exchange of letters. But effective enforcement is important for public trust in planning.

There will be times when councillors have to act as a conduit for complaints and they should refer the matter to officials and keep on top of it. It might be that no breach of planning control has taken place or the subject of the complaint is best dealt with under other legislation, for example environmental health or licensing.

Some cases will require an enforcement or stop notice or breach of condition notice to be served and this is where I tend to disagree with the Code and the Protocol which say, essentially, leave it to officials.

I would expect significant enforcement cases to come before councillors who may have view on what has to be done to rectify the breach or the timescale within which the notice has to be addressed.

What I do recommend is for Councils to develop an enforcement charter or policy which sets out how issues like complaints will be dealt with and the processes which can lead to enforcement and potential prosecution.

RELATIONS BETWEEN COUNCILLORS AND OFFICIALS

From 1 April, Councils will no longer be consultees on planning issue, you will be policy makers and decision makers. So the buck stops with you.

For planning officials, this will bring a new and, for some, arguably worrying proximity to politicians.

I confess I have enjoyed consistently good relationships with politicians, both at local authority and central government. I have tried to understand the politician's perspective and work with it rather than kicking against it or being downright obstructive. That does not mean agreeing with everything but it does mean building effective working relations. It is about team work.

My first job was with the Burgh of Motherwell and Wishaw. The very early advice from the Director of Planning, the wonderful Al Abbott has stayed with me – do not get on your professional high horse about things that don't really matter. The reaction is, quite likely to be - oh it's just the planner again and you are seen as obstructive, obstinate, pernicky or just a pain in the a**e.

Officials are entitled to 2 things:-

- Their day in court, the right to have their views heard. This might involve telling councillors things that they might not want to hear but, nonetheless, need to hear. That advice needs to be given and heard without fear or favour.
- A decision, not endless consideration of a proposal.

Once that decision has been made, officials must implement it whether they agree or not. Officials propose, politicians dispose. So when a decision is taken by members, it must be implemented with commitment and professionalism.

SOME CONCLUDING THOUGHTS

For local government to assume responsibility for planning is a seismic change but one that I believe is absolutely right. Most planning issues are local and should be determined according to local needs and priorities established by elected representatives.

Earlier I mentioned 4 issues – efficiency, inclusion, effectiveness and integrity.

Efficiency and **inclusion** are important, no question that they are key elements of a high quality planning service. But the success of planning in NI – or anywhere for that matter – will not be judged by how quickly decisions are made or plans prepared; nor will it be judged by how consultative or inclusive the process has been. The yardstick by which planning will be assessed is what has been created – places where people want to be. What I referred to in a speech as the Conservation Areas of Tomorrow.

It's the outcomes that matter

John Swinney who is currently Scotland's DFM said when I first met him after he assumed responsibility for planning in 2007 was that he wanted planning to make things happen. The challenge was to promote and enable development of the right quality and the right place. That seems to me to capture the issue of **effectiveness** I mentioned earlier

That was a good political framework within which to work. Don't get me wrong, effective regulation is vital but there is a tendency for planning to over-regulate where a light touch might be most appropriate and under-regulate where it is absolutely critical.

East Ayrshire experience – 2 coal companies went under; 2000 hectares of derelict land; over 20 voids; restoration costs of over £160 million, less than £30 million in bonds. Policy context fine but the words counted for nothing as the policies were not actually implemented.

Finally let me return to **integrity** where the bar has been set pretty high and it is essential that this quality be retained while delivering a planning service that is efficient, inclusive and effective.

I wish you well in rising to these challenge. It is important not just for your Council but also for NI that you do.