Report of Solicitor

Subject: Members' Duties in Determining Applications

Introduction

1. The purpose of this report is to briefly summarise the role of this Committee within the planning system.

The National Park Purposes

2. The purposes of National Parks are set out in section 5(1) of the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”). They are firstly, to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and, secondly, to promote opportunities for the understanding and enjoyment of the special qualities of the area by the public. In fulfilling these functions, the Authority is also under a duty to foster the social wellbeing of communities within its area.

The Sandford Principle

3. To help National Park Authorities make decisions between conservation and recreation, the National Parks Policy Review Committee made a recommendation in 1974, which is now known as the 'Sandford Principle'. The recommendation was:
"Where irreconcilable conflicts exist between conservation and public enjoyment, then conservation interest should take priority"

4. Following the ethos of the Sandford Principle, Section11A(2) was added to the 1949 Act, which now provides that in exercising or performing any functions in relation to, or so as to affect, land in a National Park, the Authority shall have regard to the purposes specified in section 5(1) of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

5. The Sandford Principle is often misquoted as "conservation has priority over recreation"; however, importantly, it is better summarised as establishing the primacy of the first purpose over the second in cases of irreconcilable conflict.

6. Officers will advise in their reports if they are of the view that a proposal does not accord with the Sandford Principle.

The Purpose of the Planning System and Relevant Considerations in decision-making

7. The planning system is a statutory code which regulates the rights of landowners and others interested in land to ensure that the

development and use of land reflects the public interest. Planning decisions must be made in accordance with its provisions.

8. The public interest in the decision-making on applications that come before the Committee is primarily expressed through the development plan. Currently, the development plan consists of the National Development Framework - Future Wales: The National Plan 2040 adopted by the Welsh Government on 24 February 2021 and the Pembrokeshire Coast National Park Local Development Plan 2 adopted by this Authority in September 2020.

9. The law requires planning decisions to be taken in accordance with the development plan unless material (that is to say, relevant) considerations indicate otherwise.

10. Relevant considerations can be:

- National planning policy, which is set out in Planning Policy Wales and the accompanying Technical Advice Notes.
- The need to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park, and to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public, as expressed through the policies of the Local Development Plan.
- Considerations relating to the planning history of a site, highways, nature conservation, noise, loss of privacy, the layout, design and appearance of a proposed development, and any effects on a listed building or conservation area.

11. Irrelevant or non-material considerations must be disregarded when taking planning decisions. For example, issues such as loss of view, or negative effect on the value of properties, are irrelevant considerations. The personal circumstances of an applicant are only very rarely material to a decision to planning decisions.

12. The LDP2 was prepared with a view towards reconciling any conflict between the special qualities of the National Park and the need to make rational choices in deciding where land is needed, in circumstances where the need is greater than the supply of suitable land, whilst at the same time doing enough to address issues such as

- climate change, sustainable design, flooding and sustainable energy;
- finding an approach which helps sustain and diversify rural communities and which maintains and enhances the visitor economy while guarding against development in countryside locations.
- tackling the backlog of affordable housing need as well as emerging need; and
- how to continue to protect and enhance a range of community facilities.

13. The Sandford Principle has underpinned the drafting of the LDP2 and has formed the basis of many debates surrounding the progression of the LDP2, which strikes an appropriate balance between meeting the needs of stakeholders and the overarching requirement to conserve and enhance the National Park. Decisions that accord with the LDP2 are therefore also considered to accord with the Sandford Principle.

Sustainable Development

14. From 1st April 2016 public bodies have a statutory duty to carry out Sustainable Development under the Well-being of Future Generations (Wales) Act 2015.

15. The Future Generations Act defines sustainable development as the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle of acting in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs, which is aimed at achieving the following well-being goals set out in the Act:

A prosperous Wales.	An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
A resilient Wales.	A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).
A healthier Wales.	A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
A more equal Wales.	A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).
A Wales of cohesive communities.	Attractive, viable, safe and well-connected communities.
A Wales of vibrant culture and thriving Welsh language.	A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
A globally responsible Wales.	A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

16. Under part 2 of the Planning (Wales) Act 2015 local planning authorities must, as part of carrying out Sustainable Development, exercise their functions in relation to planning applications for the purpose of ensuring that the development and use of land contribute to improving the economic, social, environmental and cultural well-being of Wales.

Ecological Considerations

17. In addition to the duties that are implicit in the purposes of the National Park, under the Environment Wales Act 2016 the Authority must to seek to maintain and enhance biodiversity in the exercise of its planning functions, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.

18. The Authority is also subject to a variety of duties in respect of national and internationally important sites and protected species. These will be advised upon on a case by case basis.

Human Rights Considerations

19. The Human Rights Act 1998 incorporated into domestic law the rights set out in the European Convention on Human Rights. Provided that Members apply the Planning Acts lawfully and in a fair and impartial manner, they will thereby also have acted in accordance with the Human Rights Act 1998.

Members' Planning Code of Good Practice

20. The Authority has also adopted a Members' Planning Code of Good Practice which explains and supplements the statutory Members' Code of Conduct in the context of the planning system. It is important that Members ensure that they apply the guidance contained in the Planning Code of Good Practice whilst carrying out their statutory duties.

21. Paragraph 11 of the Code is especially relevant to decision-making in Committee:

> *"**Importance of approved policies in decision making on planning applications***
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> *In making decisions on planning applications and development plans, the law requires the application to be determined in accordance with the current development plan where relevant unless material considerations indicate otherwise. The development plan comprises the Joint Unitary Development Plan for the time being in force and any successor Plan adopted in its place and such policies should not be set aside in a particular case without sound planning reasons for doing so.*
>
> ***Do** come to meetings with an open mind and demonstrate that you are open-minded.*
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> ***Do** comply with S38 (6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the current Development Plan unless material considerations indicate otherwise.*

Do *come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new material or information or that there is simply insufficient information before you, request that further information. If necessary, propose deferral of the application.*

Don't *vote or take part in the decision on a proposal unless you have been present to hear everything that has been said at that meeting, including the Officers' introduction to the matter.*

Do *make sure that if you are proposing, seconding or supporting a decision (especially one contrary to Officer recommendations or the current Development plan) that you clearly identify and understand the planning reasons leading to the conclusion/decision and can identify the supporting evidence. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge (for example at a Public inquiry or Judicial Review proceedings)."*

Circumstances where costs may be awarded against the Authority

14. Where a decision of the Authority is the subject of an appeal to the Welsh Ministers, the Ministers or a Planning Inspector acting on their behalf has power under the Planning Acts to make a partial or full award of costs against the planning authority where the authority is held to have acted unreasonably and the unreasonable behavior has directly caused another party to incur unnecessary or wasted expense.

15. The Welsh Government Guidance on the award of costs in the Development Management Manual Section 12 Annex: Award of Costs, gives examples of unreasonable behavior and attention is drawn to the following specific examples give on unreasonable behavior by the local planning authority:

- *Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;*
- *Failure to produce evidence to substantiate the impact of the proposal, or each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without there being reasonable planning grounds to do so);*
- *Refusing permission on a ground clearly being capable of being dealt with by way of condition, where it is concluded that suitable conditions would enable the development to proceed;*
- *Acting contrary to, or not following, well-established case law;*
- *Refusing or objecting to particular elements of a scheme that the Welsh Ministers or Planning Inspector have previously indicated or determined to be acceptable;*
- *Not determining or providing a position on similar cases in a consistent manner where there has been no material change in circumstances;*

- *Failing to grant or support a further permission for a scheme that is the subject of an extant or recently expired permission, where there has been no material change in circumstances;*
- *Refusing to approve or support reserved matters when the objections relate to issues that should have been considered at the outline stage;*
- *Imposing a condition that does not comply with the tests set out in WGC016/2014: The Use of Planning Conditions for Development Management;*
- *Where there is a lack of co-operation relating to any planning obligation;*
- *Pursuing unreasonable planning obligations (i.e. section 106 agreements) in connection with a granting of planning permission, where it is not justified and does not accord with the law or relevant policy;*
- *Where an enforcement appeal could have been avoided due to inadequate investigation or insufficient communication on the part of the local planning authority; and / or*
- *Refusal to offer pre-application services, or to provide reasonably requested information, when a more helpful approach is likely to have avoided an appeal or narrowed the issues considered as part of an appeal or application (such as the failure of a local planning authority to provide information such as site history and constraints where knowledge of that information may have avoided an appeal).*