



## **NILGA Local Planning Programme for Elected Members**

**1<sup>st</sup> March 2018**

**Diana Fitzsimons MA MSc FRICS MRTPI**

### **Module Design, Delivery and Evaluation:**

The delivery of this programme will be interactive and interesting for Councillors, allowing them to learn from case studies, to ask questions regularly and to undertake role play in workshops.

Clear illustrated hand-outs in plain English will be given to participants throughout the course, with each hand-out containing links to further reading and the policy/legislation referred to. The hand-outs will be hardcopy or electronic.

Case studies will be accompanied by maps and other illustrative material.

Real life examples from the presenters' experiences in Northern Ireland and in other parts of the UK will be used throughout the presentations and discussions to keep the modules interesting and relevant to each Councillor's every day role in relation to planning.

The delivery will include:

- (a) short presentations using PowerPoint;
- (b) discussions;
- (c) case studies and benchmarking practice in other jurisdictions;
- (d) workshops with role play;
- (e) question/answer sessions;
- (f) mock appeal
- (g) hand-outs in paper and electronic form
- (h) summary notes of discussions at each session and suggestions for further training.
- (i) optional site visit as detailed below for week 9

### **Outcomes and Evaluation:**

Modules 1 -3 will:

- Improve each Councillor's understanding of the plan making system;
- Enable them to participate effectively in making robust and defensible decisions about the future of their Council area;
- Increase their understanding about what their Council's priorities for statutory plan making could and should be;
- Help them to ensure that the Council doesn't breach any statutory requirements or fail to get the plan through to adoption in a timely manner;
- Improve each Councillor's understanding of the linkages, both statutory and practical, between community planning and the statutory local development planning being carried out by the Councils;
- Highlight the need to understand linkages with planning activities carried out by the Department for Infrastructure and by the Department for Communities at regional and local level;

- Explain the range of plans prepared in the Republic of Ireland at regional and local level and their relevance to Councils with a common boundary to RoI council areas;
- Enable Councillors and their Councils to demonstrate 'joined up' good governance and to deliver planning and related activities in an holistic way;
- Help to safeguard each Council's reputation as a responsible decision maker across a range of interrelated areas of local government.

Modules 3-8 will:

- Improve each Councillor's understanding of the development management system;
- Build their decision making capability in order to deliver the Council's planning objectives as set out in their policies, their emerging LDP and in regional guidance;
- Improve the Councillors' understanding of the enforcement process and when enforcement action is desirable
- Reduce the Council's vulnerability on appeal and minimise the possibility of award of costs at appeal;
- Reduce the Council's vulnerability in relation to maladministration of their planning powers;
- Help to safeguard each Council's reputation as a responsible decision maker.

The impact and success of the training will be monitored at individual level through returned course evaluation forms and through improved understanding demonstrated in workshops. Councillors who successfully complete the entire course to a satisfactory standard will be credited by an endorsed award.

## Module 1 - Understanding plan making and the role of Councillors

**Date: 27<sup>th</sup> April 2018 2.00 to 4.30 pm, Antrim Civic Centre**

Delivered by: Emma Walker and Sharon Mossman

Content:

### **An outline of best practice in preparing and approving a Local Development Plan (LDP):**

- Summary of the current plan background to decision taking in each Council area in the absence of up-to-date Local Development Plans (LDPs).
- How can Councillors help shape their Council area for the future benefit of the people who live and work there?
- How important are the various stages of the process and demonstrating an understanding of the responses to the statutory consultation exercises.
- How can Councillors work closely with planning officers by giving them clear direction from the outset, helping them to stick to the timetable.
- The importance of an up-to-date plan for the economic prosperity of the locality and for implementing the government's Programme for Government.
- What are the statutory requirements for preparing the LDP and what is the continuing role for the Department for Infrastructure?
- How important are: fulfilling the Council's Statement of Community Involvement; proper environmental assessment; and ensuring a clear evidence base for decisions?
- What are the relevance of current RoI plans at regional and local level to those Councils with a common boundary to RoI councils?
- What is the emerging LDP's relationship with the current plan; the NI Regional Strategy; with the plans being prepared by neighbouring councils; with ongoing regeneration schemes and approved applications; and with the Council's own Community Plan? This will be expanded upon in Module 2 below.

### **Questions and Answers**

**Local Development Plans – How can Committee members best get involved without breaching the Code of Conduct.**

#### **Workshop case studies:**

(a) should there be expansion of a settlement into the Green Belt or not? This theme will be developed at a later stage in the proposed study visit

(b) how to ensure development of social/affordable housing in the area – what are the choices? This theme will be developed at a later stage in the proposed study visit.

### **Questions and Answers**

## Module 2 – How Local Development planning is linked to community planning and regeneration initiatives

**Date: 25<sup>th</sup> May 2018 2.00-4.30 pm, Antrim Civic Centre**

Delivered by: Gavin Rafferty and Kevin Murray

Content:

### **Community Planning**

- What is it? Ironing out misconceptions
- Careful programming of community planning and local development planning within the Council
- The statutory and practical links between the two types of planning
- Avoiding the pitfalls of delay, contradiction or unmet community expectations
- How best to ensure synergies

### **Questions and Answers**

**Best practice case studies** in community planning, working alongside local development planning in Scotland

### **Questions and Answers**

### **Regeneration planning**

- Ironing out misconceptions on what regeneration planning is all about
- What DfC regeneration plans are being implemented and thus not renegotiable
- Avoiding the pitfalls of delay and contradiction

**Best practice case studies/workshop** in regeneration planning working alongside local development planning in Scotland

### **Questions and Answers**

**The Controls - Making sure that the Local Development Plan is implementable within defined resources.**

- Making sure the Council committees understand each other's roles
- Performance setting and monitoring by the Dept for Infrastructure
- Call in powers by DfI – case examples
- DfI power to enforce Joint Plans
- Meeting the requirements of Environmental Assessment and other EU law

### **Questions and Answers**

## Module 3 - Understanding the Local Development Plan Process from draft stage to adoption

**Date: 29<sup>th</sup> June 2018 2.00 – 4.30 pm, Antrim Civic Centre**

Delivered by: Brian Kelly and Roger Clews

Content:

### **What can go wrong with Local Development Plan making?**

- Delay
- Political divide within Council on key issues causing stalemate
- Non compatibility with regional policy and guidance
- Call in by DfI Planning
- Breach of the Code of Conduct by a Councillor
- Judicial Review of the plan or an element of it

### **Examination of the LDP**

Insight into the process of getting the draft plan safely through the two-stage public examination process.

- The need to demonstrate clearly how the statutory requirements have been fulfilled.
- The “soundness” test and how it has been applied in England by the Planning Inspectorate.
- Learnings from recent plan Examinations in N Ireland.

### **Questions and Answers**

#### **Workshop case studies:**

(a) A Councillor not on Planning Committee wants to take an active part in an Inquiry topic session at Stage 2 as he/she opposes the proposed zoning of a particular site for housing.

(b) an example of an element of the draft LDP which may not be “sound” as arguably inconsistent with the evidence base (e.g. calculation of the amount of new housing required over the plan period).

### **Questions and Answers**

## Module 4 - Understanding development management: the planning process and the role of Councillors

**Date: 27<sup>th</sup> July 2018 2.00 - 4.30 pm, Craigavon Civic Centre**

Delivered by: Karen Blair and Sheila Murphy

Content:

### **The statutory development management process:**

- Which applications come to Planning Committee for decision and which are delegated to Council officers or made by DoE Planning
- The importance of case law and regional policy/guidance in making robust planning decisions
- The need to abide by statutory requirements in dealing with planning applications – consultation with statutory agencies, community involvement, timescales etc
- The need for good reporting and clear advice by officers to the planning committee
- The pre-determination hearing and how Councillors should treat this.

### **Questions and Answers**

#### **Making timely, effective and defensible decisions:**

- Understanding the need for timely decisions and the costs to the local economy of any unnecessary delays
- The planning committee's role in evaluating planning applications and planning conditions suggested by officers
- Propriety and leadership in decision making by Councillors
- The Committee meeting and best practice – a view from Scotland and England practice
- Whether site visits are required
- Constraints on matters which Councillors can take account of when making planning decisions
- Dealing with lobbying by applicants and objectors
- Avoiding unreasonable behaviour and potential award of costs

### **Questions and Answers**

**Case studies** on best (and not so good) practice from Scotland and N Ireland e.g.

(a) application for demolition and replacement of an historic building in a local town

(b) application for a bar/restaurant on the edge of the defined town centre

(c) application for a mixed use affordable housing scheme on former industrial land

### **Questions and Answers**

## Module 5 - Understanding planning conditions and planning agreements and the role of Planning Committee

**Date: 31<sup>st</sup> August 2018 2.00 – 4.30 pm, Antrim Civic Centre**

Delivered by: Gary McGhee and Diana Fitzsimons

Content:

### **The legal and policy requirements for planning conditions:**

- Types of planning condition
- The importance of clear wording
- Applications to remove or vary a condition in a planning permission
- Enforcement for breach of a condition
- Appeal against a planning condition

### **Questions and Answers**

**Case studies:** e.g.

(a) should an agricultural occupancy condition be applied in granting planning permission for a rural dwelling?

(b) should a condition be applied for specific sight lines coming out of a vehicular access to a proposed business even if neighbours claim that they own the land required for the sight lines?

(c) an appeal against a condition restricting hours of opening of a motor cycle race track

(d) an appeal against a car parking condition for a commercial development which is viewed by the applicant as unreasonable.

### **Questions and Answers**

**Planning agreements:**

- The law and any relevant guidance
- What are the practical issues in getting timely agreements prepared?
- Avoiding delays
- When can they be removed?

**Case studies** of recent planning agreements: e.g.

(a) financial contributions from developers of student accommodation in Belfast City Centre

(b) financial contributions to off -site road infrastructure for edge of centre retailing park

(c) Getting a planning agreement removed/amended at Belfast City Airport

### **Questions and Answers**



## Module 6 - Understanding the statutory appeal system and best practice

**Date: 28<sup>th</sup> September 2018 2.00 – 4.30 pm, Antrim Civic Centre**

Delivered by: Trevor Rue and Conor Hughes

Content:

### **The various types of appeals and the role of the Council officer and Councillor:**

- Managing the process – Planning Committee best practice
- The role of the Planning Appeals Commission
- Presenting the Council's case on appeal – officers and Councillors
- Dealing with lobbying by appellants and third parties
- Decisions by the Planning Appeals Commission and their repercussions
- Avoiding Award of Costs by the PAC

### **Questions and Answers**

**Case examples** from N Ireland: e.g.

- (a) hot food bar in small parade of shops;
- (b) demolition and new house in a Conservation Area;
- (c) out of town centre retail development;
- (d) infill dwelling in AONB part of the countryside

### **Questions and Answers**

#### **Mock Planning Appeal with role play by delegates**

- Briefing material to be given to Councillors several weeks in advance
- Each Councillor to play a different role in the appeal
- Outcomes and behaviours to be evaluated by the group

### **Questions and Answers**

## Module 7 - The statutory enforcement process and the role of the Planning Committee and other Councillors

**Date: 26<sup>th</sup> October 2018 2.00 – 4.30 pm, Antrim Civic Centre**

Delivered by: Judith Winters and Maria O'Loan

Content:

### **The essentials of law and policy relating to enforcement:**

- Understanding the legislation; regional policy and advice; and case law
- Making an appropriate response to unauthorised development in the context of Council resources and reputation
- When is enforcement out of time?
- What can go wrong in enforcement cases?
- Planning Committee procedures for enforcement decisions (and for drawing up the Council's own enforcement policy)
- Balancing the proper arguments for and against the enforcement case

### **Questions and Answers**

**Examples of cases** from Scotland/England and N Ireland e.g.

- (a) Unauthorised car sales in former countryside barn;
- (b) Change of use of inner city dwelling to multiple occupation;
- (c) Non-compliance with a planning condition in major new mixed use development;
- (d) unauthorised extension to village dwelling

### **Questions and Answers**

## **Module 8 – Maladministration charges to the Ombudsmen and the judicial review of planning decisions**

**Date: 30th November 2018 2.00 – 4.30pm, Craigavon Civic Centre**

Delivered by: Faye Dunwoody and Richard Harwood

Content:

### **The different types of challenges by individuals or groups and possible outcomes:**

- To the Courts for a Judicial Review
- To Local Government Ombudsman
- To Public Services Ombudsman

### **Questions and Answers**

### **How Councillors and Councils can avoid maladministration charges related to planning:**

- Examples of breaches of the Code of Conduct and Guidance in planning decisions
- Cases relating to either “actual” or “apparent” bias
- Cases relating to breach of protocol
- Pre-determination of the outcome of a planning application by Committee members
- Need to take time to consider all the information pertinent to a decision
- Duty to give reasons for a decision especially if the Planning Committee makes a decision contrary to the case officer’s recommendation
- These cases will relate to N Ireland and other parts of the UK

### **Questions and Answers**

### **Outcomes and possible penalties – case studies from NI and elsewhere in the UK**

- Quashing of the planning decision
- suspension or disqualification from office of the Councillor
- a prison sentence
- surcharging of Councillors if wilful misconduct found

### **Questions and Answers**

## Module 9 – Optional Study Trip to a Council in Scotland

Delivered by: Diana Fitzsimons

**Date: 7<sup>th</sup> September 2018**

The aim of this optional module is to demonstrate best practice in decision making by a Council and its Planning Committee. Stirling would make an ideal Council for course delegates to share experiences with and the proposal is a visit to a planning committee meeting and possible site visits to help our Councillors understand the projects which the Committee will be debating.

My reasons for choosing Scotland are:

- The Scottish planning system is the one upon which the new N Ireland system has been modelled
- Stirling is a medium sized town with a rural hinterland and with issues relating to: for example pressure to expand, deprived communities, conservation, transportation, retailing, social housing, employment and tourism
- The Council is regarded as implementing best practice in terms of governance and decision taking
- I have good connections with several private practices in Scotland and through them with the Council which will facilitate the study visit.
- I have arranged many study trips in the past including most recently a study trip for international delegates to Dublin in 2017. I organised a study visit to Edinburgh in 2007 for about 20 N Ireland stakeholders in connection with the proposed regeneration of the former shipbuilding area of Belfast Harbour – renamed Titanic Quarter.

Proposed draft format for study visit:

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|-------|--|
| 7.00  | Flight from Belfast to Edinburgh and coach to Stirling   |
| 9.30  | Arrival and introductions  |
| 10.00 | Presentation on plan making and development control issues in Stirling<br><br>Questions and answers  |
| 10.45 | Presentation on the committee structure in the Council and the issues to be debated and decided upon at the afternoon Planning Committee meeting<br><br>Questions and answers  |
| 11.30 | Facilitated discussion between NI Councillors and host Councillors on matters such as: <ul style="list-style-type: none"><li>• Councillors' leadership role in relation to interpreting public opinion</li><li>• Lobbying and each Councillor's electorate</li></ul> |

- Code of Conduct
- Material considerations in planning decision making
- Community planning and links to local development plan making
- Setting the Planning Committee agenda

12.30 Lunch

2.00 Attendance at Planning Committee with full briefing materials received in advance. The meeting will demonstrate how representations from the applicant or objectors are listened to; how conflicts of interest are dealt with; how officers present their recommendations and are questioned by Councillors; and how the Committee debates and reaches a decision.

4.00 Coffee and closing discussion with Committee members and officers

5.00 Site visits to projects (if required)

7.30 Return coach to Edinburgh Airport and flight to Belfast

Pool of those who may deliver the programme:

- (1) Diana Fitzsimons, Planning Consultant and Visiting Professor Ulster University
- (2) Richard Harwood QC Barrister Essex Chambers
- (4) Emma Walker, Associate Director Turley
- (5) Sheila Murphy, Associate Director Turley
- (6) Brian Kelly, Director Turley
- (7) Gary McGhee, Partner Carson McDowell Solicitors
- (8) Faye Dunwoody, Solicitor Carson McDowell Solicitors
- (9) Les Ross, Director Les Ross Associates
- (10) Judith Winters, Principal Planner Antrim and Newtownabbey Council
- (11) Tom Stokes, Director TSA Planning
- (12) Karen Blair, Partner Cleaver Fulton and Rankin Solicitors
- (13) Conor Hughes, Planning Manager Lisburn and Castlereagh Borough Council
- (14) Trevor Rue, Principal Commissioner Planning Appeals Commission
- (15) Anita Conway, Director of Development Radius Housing
- (16) Roger Clews, Principal Inspector, English Planning Inspectorate
- (17) Gavin Rafferty, Senior Lecturer in the Built Environment, UU
- (18) Sharon Mossman, Principal Planner at Antrim and Newtownabbey Council
- (19) Kevin Murray, Partner of Kevin Murray Associates, Glasgow
- (20) Dr Stephen McKay, Senior Lecturer in Planning, QUB
- (21) Maria O'Loan, Partner Tughan Solicitors

Full CVs will be produced in advance of programme delivery.

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