

## **PLANNING ENFORCEMENT AD HOC SCRUTINY COMMITTEE**

### **Briefing Note: Circumstances in which Members can be used as witnesses in planning enforcement cases.**

#### **General Background**

1. When evidence is being gathered for planning enforcement purposes it is important to bear in mind the quality standards attached to evidence. If evidence does not meet certain standards it may not be admitted. The usual rule is that evidence must be reliable, relevant, truthful and convincing. It may be excluded in proceedings if it is hearsay, opinion, prejudicial, irrelevant, or obtained unlawfully.

#### **Form of witness evidence**

2. Generally, witnesses can only give evidence of facts, which they have personally observed. However, an expert can give evidence of their opinion, provided a court is satisfied that the witness is suitably qualified or experienced to give such an opinion.
3. In planning enforcement cases, evidence of fact will usually be provided by members of the public and Officers and expert evidence will be given by Officers, and/or other expert witnesses.

#### **Gathering evidence**

4. Many matters of planning enforcement begin by virtue of a complaint from a member of the public. Enforcement Officers investigate the complaint and decide what action, if any, to take. If a decision is made to take the matter further, the Enforcement Officer will usually attend the site concerned to witness a possible breach themselves. This means that members of the public are protected from giving evidence and their anonymity is maintained. It also means that the Officer concerned can satisfy themselves that a breach has occurred, and give opinion evidence as well as evidence of fact.

#### **Can Members be used as witnesses?**

5. Members may sometimes receive a complaint from a member of the public about a possible planning breach. They should refer this to the Enforcement Team to investigate. Members may also, on occasions, witness something, which they suspect may amount to a breach of planning law. In this situation they should, again, refer the matter to the Enforcement Team to investigate.
6. In certain situations, the Enforcement Team may wish to take a statement from a Member of what they have witnessed. This might, for example occur when the Enforcement Team have not been able to witness the breach themselves, or in cases where the evidence needs to be corroborated.

### **Implications of Members acting as witnesses**

7. Nevertheless, the primary role of Members is to represent their constituents, not act as professional witnesses for the Council. Nevertheless, Members may on occasions witness a suspected planning breach and provide evidence. This could result in them attending court to give evidence. In such cases, Members should be aware that the Defence are entitled to ask for evidence of bad character, such as previous convictions.
8. Members should at all times observe the general obligations in the Members Code of Conduct and must not, for example, conduct themselves in a manner which could reasonably be regarded as bringing their office into disrepute. A recent example of this involved a Birmingham City Councillor who trespassed on to private land to video what he considered to be a breach of planning law, and was found to have breached the Code of Conduct.
9. Members should also be careful to avoid doing anything which may amount to covert surveillance. Members should not carry out any covert surveillance for the purpose of a specific investigation, which is planned. For example, if a Member planned to watch a late-night takeaway covertly from an adjoining dwelling, this would probably be classified as directed surveillance and would be unlawful under the Regulation of Investigatory Powers Act 2000 (RIPA).
10. Officers of the Enforcement Team can obtain RIPA authority to conduct directed surveillance if it should be necessary.
11. Finally, any Member who is asked to provide witness evidence should not take any part in the decision to prosecute an offender, to avoid a conflict of interest and the allegation of bias.

### **Summary**

12. In the circumstances outlined above, Members can be used as witnesses of fact, but must always be mindful of their role, responsibilities and legal obligations referred to in this note.
13. Under the Code for Prosecutors, Planning Enforcement Officers have the responsibility of ensuring that there is enough evidence to proceed, and consequently the decision on whether to use the evidence of a Member must always be at the discretion of the Officer.