

Code of Practice for Councillors and Officers Dealing with Planning Matters

This Code of Practice supplements the Council's Code of Conduct for Councillors and where appropriate Councillors should refer to the Code of Conduct which is set out in the Council's Constitution. The Council's Monitoring Officer's advice may be sought on the interpretation of the Code of Conduct or this Code.

The term 'Planning Committee' in this Code is used in a generic sense and applies to any Council Committee, sub-committee or Cabinet when considering a planning matter. Planning matters include the consideration of planning applications, the preparation of development plans and other planning policy and the enforcement of planning control.

1. Introduction

- 1.1 Planning affects land and property interests, including the financial value of land and the quality of their settings. It is not an exact science. It is often highly contentious because decisions affect the daily lives of everyone and the private interests of Councillors of the public, landowners and developers. Opposing views are often strongly held by those involved. A key role of the planning process is balancing the needs and interests of individuals and the community.
- 1.2 The planning system can only function effectively if there is trust among those involved. There must be trust between Councillors and Officers and between the public and the Council. The Third report of the Committee on Standards in Public Life (the Nolan Committee) (1997) recommended that each local authority's practices and procedures were set out in a local code of planning conduct to avoid allegations of malpractice in the operation of the planning system.
- 1.3 The general principles that underlie the Council's Code of Conduct for Councillors and apply to this Code of Practice are:
 - 1.3.1 Councillors should serve the public interest and should never improperly confer an advantage or disadvantage on any person.
 - 1.3.2 Councillors should not place themselves in situations where their honesty or integrity may be questioned.
 - 1.3.3 Councillors should make decisions on merit.
 - 1.3.4 Councillors should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
 - 1.3.5 Councillors may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
 - 1.3.6 Councillors should respect the impartiality and integrity of Officers.
- 1.4 The Council is committed to open, fair and transparent decision-making. Planning decisions should be made impartially, with sound judgement and for

justifiable reasons.

- 1.5 This Code of Practice sets out practices and procedures that Councillors and Officers of the Council shall follow when involved in planning matters. Planning matters include the consideration of planning applications, the preparation of development plans and other planning policy and the enforcement of planning control.
- 1.6 Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected Councillors and officers. Breaches of this Code may also amount to breaches of the Council's Code of Conduct for Councillors. If in doubt about what course of action to take, a Councillor or officer should seek the advice of the Council's Monitoring Officer.
- 1.7 This Code of Practice sets out principles to guide Councillors and officers in determining planning applications and making other decisions within the terms of reference of Planning Committee. Although of particular relevance to members of Planning Committee it applies to all members of the Council who may become involved in planning and development matters.

2. The Role and Conduct of Councillors and Officers

- 2.1 Councillors and Officers have different, but complementary roles. Both serve the public but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole.
- 2.2 The role of a member of the Planning Committee is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.3 Whilst Councillors have a special duty to their division constituents, including those who did not vote for them, their overriding duty is to the whole community. This is particularly pertinent to Councillors involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest.
- 2.4 Councillors' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors must, therefore, consider all of the material issues in the light of Development Plan policies, Government advice and their own individual judgement and make a decision in the interests of the area as a whole.
- 2.5 Whilst Councillors should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.6 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of that code may be subject to disciplinary action by the Institute.
- 2.7 Officers in their role of advising Councillors shall provide:
 - 2.7.1 Impartial and professional advice;

- 2.7.2** Complete written reports covering all necessary information for a decision to be made.
- 2.8** The Council endorses the statement in the RTPI code that, 'RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions', and extends it to apply to all officers in the authority advising on planning matters.
- 2.9** That the Council may not always follow the advice of their professional planning officers is perfectly proper. The professional officer too, may have a change of opinion, but this must be on the basis of professional judgement, and not because an authority, its Councillors or other Officers, have prevailed upon the Officer to put forward his or her professional view as something other than it really is.
- 2.10** If the Planning Committee is minded to refuse or grant an application contrary to an Officer's recommendation, it should consider whether to defer the application to the next available committee, before making the final decision. This will allow Councillors to obtain further legal advice on the proposed reasons for acting contrary to the recommendation based on material planning considerations. If such a decision is made it must be clearly minuted, expressed clearly and be based upon sound planning reasons supported by evidence.
- 2.11** Officers shall follow the guidance on their standards of conduct as set out in the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000.
- 2.12** Councillors shall follow the advice in the Councillor's Code of Conduct about accepting gifts and hospitality. Councillors should treat with extreme caution any offer which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers of hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, Officers shall ensure it is of a minimal level and declare it in the hospitality register as soon as possible.

3. Councillors Interests and Allegations of Bias

- 3.1** Where Councillors have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.
- 3.2** Where the interest is such that members of the public may feel that the Councillor will not be able to approach matters with an open mind and consider the application on its planning merits, that Councillor should consider withdrawing from the Committee.
- 3.3** These principles apply equally to Councillors who are not members of Planning Committee. Councillors who have such interests should consider whether it is appropriate for them to participate in the planning process, and in any event, should declare such interest at any meeting which they may attend or in any letter which they may write.
- 3.4** The Code of Conduct for Councillors provides guidance as to disclosable interests which may (depending on their nature) affect a Councillor's ability to take part in the decision-making process. However, Councillors may have other

interests which may influence their decision which will not amount to disclosable interests for the purposes of the Code. In order to maintain the integrity of the planning system, Councillors should be careful to ensure that such interests do not unduly influence their decisions or give rise to a perception of bias in decision making. Examples of such interests are:

- 3.4.1 from being closely aligned with division campaigns or issues;
- 3.4.2 from membership of other Committees of the Council;
- 3.4.3 from membership of other public or community bodies;
- 3.4.4 from membership of voluntary associations and trusts (including where appointed by the Council);
- 3.4.5 from a connection with a particular policy initiative of the Council;
- 3.4.6 from membership of clubs, societies and groups; and
- 3.4.7 from hobbies and other leisure interests.

Such interests may mean that a Councillor is involved with a planning application before the matter comes before the Planning Committee. Such involvement need not on its own debar a Councillor from participating in making the planning decision when the matter is considered by Planning Committee, providing that the Councillor has not already decided how they will vote on the matter before the Committee. Councillors should, however, always consider carefully whether in any particular case they could reasonably be seen to approach the planning merits of the application with an open mind. If the Councillor considers that this is not possible, the Councillor should withdraw from consideration of that item.

- 3.5 As a minimum, the integrity of the planning system requires openness on the part of Councillors; it must operate fairly and be seen to operate fairly.

4. Development Proposed by the Council or a Council Owned Company

- 4.1 Planning legislation allows the Council to submit and determine proposals for development that it proposes to carry out itself. Council owned companies also submit proposals that are decided by the Council.
- 4.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by private developers.
- 4.3 Members of the Planning Committee who sit on the board of a Council owned company which has submitted a planning proposal shall declare an interest and take no part in the discussion and determination of that proposal, except where they are the local Councillor when they may speak on matters of local concern but shall not vote.
- 4.4 Officers who are involved in the preparation of development proposals shall not advise on, or take any part in the consideration of, planning applications in respect of such proposals.

5. Statutory Duties

The Council is also subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the planning function except when such matters are clearly immaterial because they are not capable of relating to the use of development land. Examples of these duties include:

5.1 Equality Act 2010

Section 149 provides that:

5.1.1 A council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a protected characteristic and persons who do not share it.

5.2 Human Rights

Section 6(1) of the Human Rights Act 1998 provides that:

“It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

5.3 Best Value

Section 3(1) of the Local Government Act 1999 provides that:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”

5.4 Crime and Disorder

Section 17(1) of the Crime and Disorder Act 1998 provides that:

“Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

6. Lobbying of and by Councillors

6.1 Lobbying is a normal and proper part of the political process. The applicant, supporters or those who may be affected by a proposal will often seek to influence the decision by an approach to their local Councillor or members of

the Planning Committee. However, reacting to lobbying can lead to the impartiality of a Councillor being called into question and require that Councillor to declare an interest.

- 6.2** The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessment of the case by the planning officer all need to be considered before a Councillor is in a position to make a balanced judgement on the merits of the case. Councillors should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.
- 6.3** The time for individual members of the Planning Committee to make a decision on a proposal is at the committee meeting when all available information is to hand and has been duly considered.
- 6.4** A Planning Committee member shall be free to listen to a point of view about a planning proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, Planning Committee Councillors should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting. To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if Councillors do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Councillors who are lobbied should:
 - 6.4.1** make clear that they reserve their final decision on a proposal until the committee meeting;
 - 6.4.2** only give procedural advice;
 - 6.4.3** consider referring those lobbying to the relevant Officer who can provide further advice; and
 - 6.4.4** not seek to meet an applicant or potential applicant alone.
- 6.5** Members of the Planning Committee shall not, in general, organise support or opposition for a proposal, or lobby other Councillors (other than when addressing the Planning Committee). Councillors shall not put improper pressure on Officers for a particular recommendation.
- 6.6** The local Councillor who is not a member of the Planning Committee will be allowed to attend and speak at the decision-making meeting (representing the views of their division) but not vote. The Councillor for an adjacent division substantially affected by the proposal shall, at the discretion of the chair of the Planning Committee, also be allowed to attend and speak but not vote. A local Councillor who has an interest in an application, within the meaning of the Code of Conduct should seek prior advice from the Monitoring Officer about his or her position.
- 6.7** If a member of the Planning Committee identifies themselves with a group or individual campaigning for or against an application (to the extent that they are pre determined), they shall advise of their involvement at the start of the meeting and not vote or decide on the matter. However, that Councillor shall be given the opportunity to address the Committee and then leave the meeting for the

remainder of that item.

6.8 Councillors of a Planning Committee must be free to vote as they consider appropriate on planning matters. A Councillor cannot be instructed how to exercise their vote on a planning matter.

6.9 Councillors should inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

7. Pre- and Post- Application Discussions and Negotiations

7.1 Discussions between an applicant and a planning authority, prior to the submission of an application, can be of considerable benefit to both parties and is encouraged. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the planning process. However, they should take place within clear guidelines, as follows.

7.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are those of the Officer only, and are provisional.

7.3 Advice should be consistent and based upon the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies by individual planning officers.

7.4 A written note should be made of all potentially contentious meetings. Two or more officers should attend potentially contentious meetings. A note should also be taken of potentially contentious telephone discussions.

7.5 Councillors need to preserve their role as impartial decision makers and members of Planning Committee should not take part in pre- or post- submission discussions and negotiations with applicants regarding development proposals. Should there be occasions where a pre application discussion with the Committee or with other Councillors is considered appropriate, it should be part of a structured arrangement with Officers. Councillors must avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants.

7.6 Councillors may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by Councillors should be provided to the officers dealing with the application. Councillors who are approached for planning, procedural or technical advice should refer the applicant to the relevant officer.

8. Officer Reports to Committee

8.1 The Head of Planning and/or the Planning Development Manager will submit written reports to the appropriate Planning Committee on planning applications to be determined by the Council. The reports will give the background to the application including any relevant planning history of the site, a description of the proposals and their likely effects, and the relevant Development Plan and all

other material considerations including government policy considerations. Where a planning application requires an environmental impact assessment the Head of Planning and/or the Planning Development Manager shall include in their report a summary of the environmental statement, comments by bodies consulted and representations from members of the public together with their own comments. The reports will include a summary of representations made about the application. The Head of Planning and/or the Planning Development Manager in their report will give a reasoned assessment of the proposals and a justified recommendation.

- 8.2 Supplementary written reports may be provided to Members prior to a meeting. This can be to deal with late representations after the publication of the agenda. Oral reports (except to present and update a report) may be provided and fully minuted when they do occur.
- 8.3 The full planning application, environmental statement (where required) and representations from bodies consulted and members of the public are available through the Planning Portal and can be made available to Councillors for inspection if required.

9. The Development Plan and Planning Considerations

- 9.1 Planning law sets out how decisions should be made in accordance with the Development plan unless material planning considerations indicate otherwise and should not be based on immaterial considerations.
- 9.2 Planning legislation, as expanded by Government Policy, Ministerial Statements and other Guidance and decided cases, defines which matters are material considerations for the determination of planning decisions. There is much case law on what are material planning considerations. The consideration must relate to the use and development of land.
- 9.3 It should, however, be noted that the risk of costs being awarded against the Council on appeal is not itself a material planning consideration.
- 9.4 Personal considerations and purely financial considerations are not on their own material; they can only be material in exceptional situations and only in so far as they relate to the use and development of land such as, the need to raise income to preserve a listed building which cannot otherwise be achieved.
- 9.5 The planning system does not exist to protect private interests of one person against the activities of another or the commercial interests of one business against the activities of another. The basic question is not whether owners and occupiers of neighbouring properties or trade competitors would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.
- 9.6 Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated.
- 9.7 It will be inevitable that all the considerations will not point solely to either grant or refusal. Having identified all the development plan policies, material planning considerations and put to one side all the immaterial considerations, Councillors

must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

10. The Decision Making Process

- 10.1** Councillors shall recognise that the law requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.
- 10.2** Where an environmental impact assessment is required, the Planning Committee shall take the information provided in the report into consideration when determining the application.
- 10.3** If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.
- 10.4** Where the Planning Committee decide to adopt the recommendation of the Head of Planning and/or the Planning Development Manager, the reasons contained in their report will be minuted, together with any additional reasons determined by the Committee.
- 10.5** Where the Planning Committee is minded to approve or to refuse a planning application, contrary to the recommendation of the Head of Planning and/or the Planning Development Manager, or the Development Plan, consideration should be given to deferring the item unless agreement can be reached at the meeting on the planning reasons for that decision which shall be fully minuted.
- 10.6** The reasons for Committee's decision to defer any proposal should also be recorded.
- 10.7** Councillors who are not present at the meeting for the duration of the planning officer's presentation, any subsequent representations and the entire Councillor debate shall not (save with the discretion of the Chair) be entitled to vote on the matter under consideration.

11. Site Visits by the Committee

- 11.1** A site visit may be held if the Head of Planning and/or the Planning Development Manager in consultation with Chair of the relevant committee considers it will assist Councillors in reaching their decision, where a site visit has been requested or an application deferred for such a visit. The purpose of a site visit is to gather factual information relating to the planning application. Site visits should only be undertaken where there is a reason to do so for example, where the impact of the proposed development would be difficult to visualise from photographs, satellite imaging, plans and supporting material or where the development is very contentious or complex.
- 11.2** Site visits should be requested in advance of the Planning Committee meeting and Councillors should liaise with Officers at the earliest opportunity to consider the need for a site visit.
- 11.3** When a site visit is held prior to the meeting of the Planning Committee it is desirable that all Councillors attending the Planning Committee should also attend the site visit. Councillors voting on a planning application without having attended

the visit to the particular site may give the impression that they have not taken the opportunity to be fully informed about the application. Information gained from the site visit should be reported back to committee so that all Councillors have the same information.

- 11.4** Site visits should be conducted in a formal manner. They are not a forum for the interested parties to make representations and the Committee should not get involved in discussions with other any parties attending the site visit.
- 11.5** The organisation of the site visit will fall to the planning officer, who will inform Democratic Services of the need to send out site visit invites to the following:
- All Members of the Planning Committee including nominated substitutes;
 - relevant Division Members; and
 - relevant Parish Councillors.
 - where the agent or representative of the applicant is required on a site visit to meet health and safety requirements a representative from the objectors will be invited to the site visit as an observer.
- 11.6** The Applicant/Agent will be informed that a site visit will take place in order to ensure that site access can be arranged. This is arranged by the planning officer due to their ongoing contact with relevant applicants/agents.
- 11.7** The site visit will be attended by the relevant planning officer(s) who will answer any questions raised. The planning officer(s) will describe the development and point out the relevant issue(s) that the Committee has come to view.
- 11.8** On assembling at the site, at the time specified, the Chair will explain the purpose and procedures of the site visit so that all are aware that it is a fact finding exercise only and that no decision will be taken until the committee meeting. The planning officer will explain the application as it relates to the site and relevant viewpoints. Parties who attend the site visit will be permitted to point out the salient features relevant to the subsequent decision. However no discussion of or debate on the merits of the proposal will take place on site. Discussion of such matters must take place in the Committee meeting itself. Following any questions to the planning officer, or clarification sought on matters which are relevant to the site inspection, the Chair will bring the site visit to a close.
- 11.9** Members of the Committee should address any request for clarification through the Chair of the Planning Committee. Should the Chair deem it appropriate, those present may be requested to respond to questions of fact only.
- 11.10** Councillors should not engage in open discussion either individually or in groups with the applicant or any other people present. Any request for Councillors to express a view or accept an offer of hospitality should be politely declined.
- 11.11** Unofficial site visits are not encouraged as they do not have the appropriate procedural safeguards. Any Councillor attending an unofficial site visits must ensure that they avoid giving the impression that they represent the views of the

Planning Committee or the Council. If a Councillor feels compelled to give a personal view, they should emphasise that the final decision is one for the Planning Committee.

12. Public Speaking at Planning Committee

12.1 Wherever possible, objections or representations to planning applications should be made in writing. Written representations received will be made available for public inspection and objections summarised and reported to the Planning Committee. Councillors have the opportunity to inspect all letters received before the decision on the application is made.

12.2 The Council operates a scheme of public speaking at Planning Committee meetings. Normally the following people can speak at Planning Committee in relation to any specific application:

- One speaker representing the applicant – usually the applicant themselves or their agent.
- One speaker representing the objectors.
- The relevant Parish Council representative.
- A Division Member.

In exceptional circumstances the Chair has discretion to allow any other person to speak if it is considered necessary to do so.

Order of Speakers

1. The objector has five minutes to put their case.
2. A representative of the relevant parish council then has five minutes to put their case.
3. A division member who wishes to speak on the application will be allocated five minutes to put their case.
4. At the appropriate time, any other person allowed to speak at the discretion of the Chairman will be allowed five minutes to put their case.
5. Finally, the applicant or their representative, will be allowed five minutes to put their case.

There is no discretion for the Chair to extend the stated speaking times.

12.3 The speaker representing the applicant must have the permission of the applicant to represent them.

12.4 The speaker representing the objector(s) can be a neighbour, an interested individual or a representative of a residents group.

12.5 The first objector to register to speak will normally be appointed as the spokesperson. Where there is more than one person wishing to speak, objectors

are encouraged to agree on a spokesperson who is prepared to cover all the points of concern, so as to make best use of the time available.

- 12.6** Persons wishing to speak on an application, which is to be considered at a Planning Committee and who have previously made representations on the application, should contact Democratic Services by 12 noon 3 working days before the Planning Committee meeting. Contact details will be provided on the relevant Planning Committee agenda.

No late notification will be accepted and speakers cannot “turn up” to speak at Committee without the due notice being given.

- 12.7** The purpose of the scheme is to enable speakers to put forward any points they wish to make directly to the Committee. There will be no need to read any submission already made in writing, as this will already be summarised in the report Councillors have before them. If a representation is prepared by a speaker for the meeting it is helpful if a written copy could be provided to Democratic Services in good time in advance of the meeting.
- 12.8** Speakers should confine their comments to matters relevant to planning applications.
- 12.9** People wishing to speak at Planning Committee cannot hand out documentation to members of the Committee except at the discretion of the Chair. Photographs may be handed out, provided that a minimum of 20 copies have been delivered to the Council by 12.00 noon on the last working day prior to the meeting. There is also no provision to display maps, photographs or other information on boards or on screens in the meeting room on behalf of those making representations at the meeting.
- 12.10** The Chair of the Committee retains the right to decline to hear someone if they behave improperly, offensively or if they, in the Chair's view, intentionally obstruct the business in hand.
- 12.11** Officers may comment on the representations and the merits of the application in the light of those representations.
- 12.12** The Committee will proceed to debate the application and make a decision.

13. Training

- 13.1** Councillors including named substitutes should not participate in decision-making at meetings dealing with planning matters if they have not attended the mandatory planning training prescribed by the Council.
- 13.2** Councillors should endeavour to attend any other specialised training sessions provided since these will be designed to extend Councillors' knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above, and thus assist them in carrying out their role properly and effectively.