

Teesdale District Council

Members' Planning Code of Good Practice

1.0 Background

- 1.1 This Planning Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework and replaces the Council's former Planning Code of Practice.
- 1.2 This Code follows the model adopted by the Association of Council Secretaries and Solicitors (ACSeS), originally issued in 2003 and revised in 2007 to take account of the revised Members' Code of Conduct.

2.0 Introduction

- 2.1 The aim of this Code of Good Practice is to ensure that, in the planning process, there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 2.2 The key purpose of Planning is to control development in the public interest.
- 2.3 Your role as a member of the Local Planning Authority is to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.
- 2.4 This Code applies to members at all times when involving themselves in the planning process. This includes when taking part in the decision making meetings of the Council in exercising the functions of the local planning authority or when involved on less formal occasions, such as meetings with officers or the public, or consultative meetings. It applies equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 2.5 If you have any doubts about the application of this Code to your own circumstances, you should seek early advice from the Monitoring Officer or Development Control Manager, and preferably well before any meeting takes place.

3.0 Relationship to the Members' Code of Conduct

- 3.1 Do apply the rules in the Members' Code of Conduct first.
- 3.2 Do then apply the rules in this Planning Code of Good Practice, which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may:
 - put the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - put yourself at risk of either being named in a report made to the Standards Committee, or Council, if the failure is also likely to be a breach of the Code of Conduct.

4.0 Development Proposals and Interests under the Members' Code

4.1 Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

4.2 Do then act accordingly. **Where your interest is both personal and prejudicial:**

- do not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the local planning authority.
- do not try to represent ward views, get another member to do so instead.
- do not get involved in the processing of the application.
- do not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have both a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have both a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places limitations on you in representing that proposal. You may address the committee but only to make a presentation in the same manner as would apply to a normal member of the public, in line with the Council's Scheme of Public Speaking at Planning Committee, after which you must leave the room whilst the meeting considers it. You may not remain to observe the meeting's considerations on it from the public gallery.

5.0 Fettering Discretion in the Planning Process

5.1 Do not fetter your discretion and therefore your ability to participate in planning decision making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the local planning authority and of hearing the officer's presentation and evidence, and arguments on both sides.

5.2 Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or predetermination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

5.3 Do be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal, you will be, or perceived by the public as being, no

longer able to act impartially or to determine the proposal purely on its planning merits.

5.4 Do consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district and county councillor), provided:

- the proposal does not substantially affect the well being or financial standing of the consultee body
- you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgment and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the committee and you hear all the relevant information;
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the committee; and
 - you disclose the personal interest regarding your membership or role when the committee comes to consider the proposal.

5.5 Do not speak and vote on a proposal where you have fettered your discretion. The Code of Conduct does not require you to withdraw, but you may prefer to do so for the sake of appearances.

5.6 Do explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

6.0 Contact with Applicants, Developers and Objectors

6.1 Do refer those who approach you for planning, procedural or technical advice to officers.

6.2 Do not agree to any formal meetings with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should not seek to arrange the meeting yourself but should request the Development Control Manager to organise it. The officers will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the committee.

6.3 Do otherwise:

- follow the rules on lobbying;
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Development Control Manager any significant contact with

the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded in the planning file.

6.4 In addition, in respect of presentations by applicants or developers:

- do not attend a planning presentation unless an officer is present and/or it has been organised by officers
- do ask relevant questions for the purposes of clarifying your understanding of the proposals
- do remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate committee of the local planning authority
- do be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other members might vote.

7.0 Lobbying of Members

7.1 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

7.2 Do remember that your overriding duty is to the whole community, not just to the people in your ward, and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

7.3 Do not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the interest where its value is over £25, in accordance with the authority's rules on gifts and hospitality.

7.4 Do copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity.

7.5 Do promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise.

7.6 Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

7.7 Do note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:

- listening or receiving viewpoints from residents or other interested parties;

- making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

8.0 Lobbying by Members

- 8.1 Do not become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest.
- 8.2 Do join general groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the committee that you have reserved judgment and the independence to make up your own mind on each separate proposal.
- 8.3 Do not excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 8.4 Do not decide or discuss how to vote on any application at any political group meeting, or lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.

9.0 Site Visits

- 9.1 Do try to attend site visits organised by the Council where possible.
- 9.2 Do not request a site visit until you have heard the officers' presentation and evidence and arguments on both sides.
- 9.3 Do not request a site visit unless you feel it is strictly necessary because:
- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 9.4 Do ensure that any information which you gained from the site visit is reported back to the committee so that all members have the same information.

- 9.5 Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 9.6 Do ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 9.7 Do not hear representations from any other party. If you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to, or inform, the officer present.
- 9.8 Do not express any views to anyone.
- 9.9 Do not enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
- you feel it is essential for you to visit the site other than through attending the official site visit;
 - you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file); and
 - you can ensure you will comply with these good practice rules on site visits.
- 9.10 The above points are the more important matters relating to site visits. A copy of the more comprehensive Planning Committee Site Visit Protocol, approved by the Council in September 2008, is attached as Appendix A.

10.0 Public Speaking at Meetings

- 10.1 Do not allow members of the public to communicate with you during the committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 10.2 Do ensure that you comply with the Council's procedures in respect of public speaking.
- 10.3 A copy of the Council's Scheme of Public Speaking at Committees is attached as Appendix B.

11.0 Officers

- 11.1 Do not put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Development Control Manager, which may be incorporated into any committee report.
- 11.2 Do recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at member level.
- 11.3 Do recognise and respect that officers involved in the processing and

determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the committee or its members.

12.0 Decision Making

- 12.1 Do ensure that, if you request the proposal to go before the committee rather than be determined through officer delegation, that the request is made within fourteen days of the application appearing on the weekly list of planning applications and that the planning reasons are clearly stated in the request. The reasons will be recorded and, should the proposal be submitted to committee, stated in the report to committee.
- 12.2 Do come to meetings with an open mind and demonstrate that you are open-minded.
- 12.3 Do comply with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development plan unless material considerations indicate otherwise.
- 12.4 Do come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- 12.5 Do not vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 12.6 Do have recorded the reasons for the committee's decision to defer any proposal, and that this is in accordance with the Council's protocol on deferrals.
- 12.7 Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. 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.

13.0 Development Proposals by, or affecting, the Council, Members and Officers

- 13.1 It is perfectly legitimate for development proposals to be submitted by, or which may affect, the Council, or members and officers of the Council. However, it is essential to ensure that they are handled in a way which gives no grounds for accusations of favourable treatment. For that reason:
 - all applications for developments by the Council will be reported to the

Planning Committee as will all applications by a Council member or an officer of the Regeneration Directorate, together with any application by a spouse, co-habitee or close relative of a member or such officer, together with any application which may directly affect a member or such officer; and

- the Development Control Manager may use his/her discretion to determine whether any other application should be submitted to committee, whether one which may directly or indirectly affect the Council (or appear to do so) or which has been submitted by a senior Council officer or other individual.

14.0 Training

- 14.1 Do not participate in decision making at meetings dealing with planning matters if you have not attended any appropriate planning training arranged by the Council.
- 14.2 Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, codes of practice and development plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

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