

DURHAM COUNTY COUNCIL

CODE OF PRACTICE

FOR MEMBERS AND OFFICERS

DEALING WITH PLANNING MATTERS

March 2008

This Code of Practice supplements the Council's Code of Conduct for Members and where appropriate members 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.

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 members 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 members 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 Council is committed to open, fair and transparent decision-making. Planning decisions should be made impartially, with sound judgement and for justifiable reasons.
- 1.4 This Code of Practice sets out practices and procedures that members and officers of the County 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.
- 1.5 This code is largely based upon the Local Government Association's revised guidance note of good practice issued in 2002, which takes account of the new ethical framework for local government introduced by the Local Government Act 2000. It takes account of the Royal Town Planning Institute's Code of Professional Conduct and advice issued by the Audit Commission, the Commissioners for Local Administration in England and the National Planning Forum. It complements the Council's Code of Conduct for Members. This code is consistent with meeting the requirements of Article 6 of the European Convention on Human Rights which confers a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.
- 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 members and officers. Breaches of this Code may also amount to breaches of the Council's Code of Conduct for Members. If in doubt about what course of action to take, a member or officer should seek the advice of the Council's Monitoring Officer.

2. THE ROLE AND CONDUCT OF MEMBERS AND OFFICERS

- 2.1 Members and officers have different, but complementary roles. Both serve the public but members are responsible to the electorate, while officers are responsible to the Council as a whole.
- 2.2 Whilst members have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. This is particularly pertinent to members involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest.
- 2.3 Members' 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. Members 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 County as a whole.
- 2.4 Whilst members 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.
- 2.5 Members shall follow the advice in the Council's Code of Conduct about accepting gifts and hospitality. Members 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 book as soon as possible.
- 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 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 members or other officers, have prevailed upon the officer to put forward his or her professional view as something other than it really is.
- 2.8 The County 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 The County Council shall have a designated head of the planning service, who is qualified for election to membership of the RTPI and who has direct access to elected members as their professional adviser on planning matters. A superior officer shall not have the power to overrule the professional advice of the head of the planning service.

- 2.10 Officers shall follow the guidance on their standards of conduct as set out in the County Council's Staff Guidance, the Officers' Code of Conduct 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.

3. DECLARATION OF PERSONAL INTERESTS

- 3.1 The Council's Model Code of Conduct advises members on the disclosure of a personal interest and whether it is a prejudicial interest (a copy of this section of the Model Code of Conduct is attached to this Code of Practice as Appendix 1). Personal interests include those of relatives or friends. Relatives are defined in the Code. Friends are not defined but the Standards Board for England suggests it is someone well known to the member and regarded with liking, affection and loyalty ie a closer relationship than mere acquaintance. If in doubt the Monitoring Officer's advice should be sought.
- 3.2 If the interest is personal and prejudicial the member shall declare it at the earliest opportunity, must withdraw from the room where the matter is being considered and must not try to influence those making the decision or take any part in the consideration or determination of the matter.
- 3.3 Where a member has a personal interest that is not prejudicial under the Council's Model Code of Conduct, the member, when attending a meeting of the Council at which the matter is considered, shall declare it at the commencement of the meeting and may participate in the discussion and vote on the matter.
- 3.4 The exemptions from having a prejudicial interest by reason of Paragraph 10(2) of the Council's Model Code of Conduct shall be subject to the following caveat. 'If a member, in advance of the decision-making meeting has taken a fixed view on the planning matter, either in the meeting of the other body or otherwise, they would not be able to demonstrate that all the relevant facts and arguments had been taken into account and they would have fettered their discretion'. Therefore members should scrupulously avoid forming a fixed view on the issue in advance.
- 3.5 Members who have previously participated in a decision for a particular development shall declare a personal and prejudicial interest at the commencement of the planning committee when the application is considered and shall withdraw and not participate in the discussion or vote on the matter.
- 3.6 Serving members who act as agents for persons pursuing planning matters within their authority shall play no part in the decision-making process for those proposals. Similarly, if they submit their own proposal to the authority on which they serve, they should play no part in its consideration. When submitting proposals on behalf of themselves or others, the member shall inform the Monitoring Officer of the submission.
- 3.7 Officers must always act impartially. An officer who believes he or she may be seen to have a personal and prejudicial interest in a planning matter, shall declare it at the earliest opportunity, so advising the Head of Planning and the Monitoring Officer

and have no further involvement in the processing or consideration of that matter.

- 3.8 Planning officers shall never act as agents for persons pursuing a planning matter within the county or one outside significantly affecting the county.

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 a personal and prejudicial interest and take no part in the discussion and determination of that proposal, except where they are the local Member 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. LOBBYING OF AND BY MEMBERS

- 5.1 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 member or members of a planning committee. However, reacting to lobbying can lead to the impartiality of a member being called into question and require that member to declare an interest.

- 5.2 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 member is in a position to make a balanced judgement on the merits of the case. Members should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.

- 5.3 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.

- 5.4 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 members 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 members do not retain open minds and are not

genuinely susceptible to persuasion at the decision-making meeting. Members should make clear that they reserve their final decision on a proposal until the committee meeting.

- 5.5 Members of the planning committee shall not, in general, organise support or opposition for a proposal, lobby other members, (other than when addressing the planning committee). Members of the Council shall not put improper pressure on officers for a particular recommendation.
- 5.6 The local member will be allowed to attend and speak at the decision-making meeting but not vote. The member of an adjacent division(s) substantially affected by the proposal shall, at the discretion of the chair of the planning committee, be allowed to attend and speak but not vote. A local member who has a personal or prejudicial interest in an application, within the meaning of the Model Code of Conduct should seek prior advice from the Monitoring Officer about their position.
- 5.7 If a member of the Planning Committee identifies himself/herself with a group or individual campaigning for or against an application, he or she shall declare a personal and prejudicial interest and not vote or decide on the matter. However, that member shall be given the opportunity to address the Committee.
- 5.8 Members of a planning committee must be free to vote as they consider appropriate on planning matters. Political group meetings prior to the committee meeting shall not be used to decide how members should vote at the planning committee.

6. PRE- AND POST- APPLICATION DISCUSSIONS AND NEGOTIATIONS

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 Members need to preserve their role as impartial decision makers and should not take part in pre- or post- submission discussions and negotiations with applicants regarding development proposals. Should there be occasions when members are involved, it should be part of a structured arrangement with officers, including a senior planning officer. Members must avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants.

- 6.6 Members 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 members should be provided to the officers dealing with the application.

7. OFFICER REPORTS TO COMMITTEE

- 7.1 The Head of Planning will submit written reports to the Planning Committee on planning applications to be determined by the County 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 Government policy considerations, together with any other material considerations. Where a planning application requires an environmental impact assessment the Head of Planning shall include in his/her report a summary of the environmental statement, comments by bodies consulted and representations from members of the public together with his/her own comments. The reports will include a summary of representations made about the application. The Head of Planning in his/her report will give a reasoned assessment of the proposals and a justified recommendation.
- 7.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.
- 7.3 The Head of Planning will have available for inspection by members the full planning application, environmental statement (where required) and representations from bodies consulted and members of the public.

8. THE DECISION MAKING PROCESS

- 8.1 Members 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.
- 8.2 Where an environmental impact assessment is required, the Planning Committee shall take the information provided in the report into consideration when determining the application.
- 8.3 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.
- 8.4 Where the Planning Committee decide to adopt the recommendation of the Head of Planning, the reasons contained in his/her report will be minuted, together with any additional reasons determined by the Committee.
- 8.5 Where the Planning Committee is minded to approve or to refuse a planning application, contrary to the recommendation of the Head of Planning, agreement shall be reached at the meeting on the reasons for that decision. They shall be fully minuted by the Director of Corporate and Legal Services.

9. SITE VISITS BY THE COMMITTEE

9.1 A site visit by members of the Planning Committee may be held where a proposal is complex and the impact is difficult to visualise or assess from the plans and supporting information.

9.2 Site visits will be organised in accordance with the following procedures:

- (i) The Planning Committee may authorise a site visit.
- (ii) However, in circumstances when it is considered that a planning application is complex so as to merit a special meeting of the Planning Committee (and site visit, if necessary), the Head of Planning and the Director of Corporate and Legal Services, following consultation with the Chairman and Vice-Chairman may make the necessary arrangements for the holding of such a meeting (and site visit if required) without prior authorisation by the Planning Committee.
- (iii) The Director of Corporate Services will invite the local County Councillor to site visits. Where a proposal would have significant direct impact upon an adjacent electoral division, at the discretion of the Chairman of the Planning Committee, the local County Councillor for the adjacent division will also be invited.
- (iv) The role of the applicant during a site visit shall only be to secure access to the site in accordance with health and safety provisions. The applicant shall not participate in any discussions on site but may be asked to provide factual information.
- (v) Objectors will not normally be invited to attend a site visit or participate in any discussions on site.
- (vi) On assembling at the site, at the time specified, the Chairman 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 Head of Planning, or his/her representative, will explain the application as it relates to the site and relevant viewpoints. Following any questions to the Head of Planning, the Chairman will bring the site visit to a close.
- (vii) In circumstances where a site visit is held immediately prior to a meeting of the Planning Committee, only those voting members of the Planning Committee who have attended the prior site visit will be permitted to vote. Voting members who have not attended the prior site visit, may attend and speak at the meeting of the Planning Committee which determines the application, but may not vote.

10. REPRESENTATIONS ON PLANNING APPLICATIONS

10.1 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. Members of the Council will be given the opportunity to inspect all letters received before the decision on the application is made.

10.2 There will be occasions when applicants or objectors, or both, may wish to make representations in person to the Planning Committee. In such circumstances the following procedure will apply:

- (i) The applicant will be informed that the application and all supporting documents will be taken into account. The objectors will be informed that their written representations will be taken into account. Both the applicant and the objectors will also be informed that they have the right to attend the Committee and make representations in person. They will be asked to indicate whether they wish to do this and, if so, they will be invited to the meeting at which the decision is to be made.
- (ii) Only one representative on behalf of the applicant will be heard. Where there is a group of objectors, only one representative will be heard. Where possible, groups of objectors should decide on a single spokesperson.
- (iii) At the meeting the Head of Planning will present his / her report first.
- (iv) The objectors will make their representations, subject to a time limit of 10 minutes (except at the discretion of the Chairman), and may be asked questions by the Committee.
- (v) The applicant will then make his or her representations, subject to a time limit of 10 minutes (except at the discretion of the Chairman), and may be asked questions by the Committee.
- (vi) Officers may comment on the representations and the merits of the application.
- (vii) The Committee will proceed to debate the application and make a decision. The minute will include the reasons for the decision.
- (viii) Different procedures apply for representations by and discussions with District or Parish Councils.

10.3 District and Parish Councils as statutory consultees are in a different position from third party objectors. The above procedure is therefore inappropriate in handling representations from such local councils when they are concerned by particular development proposals. Accordingly, when a council requests the opportunity to discuss a particular planning application with the County Council, or when the County Council thinks it appropriate to meet with the local council prior to deciding the application, the discussions will normally be conducted by a number of members appointed for the purpose, with other parties not present. In order not to prejudice the openness and fairness of the final decision-making meeting, the members will report back in public to the decision-making Planning Committee, concerning the nature of the discussions and views of the District and/or Parish Council, for consideration with the merits of the proposal.

11. REVIEW OF DECISIONS

- 11.1 The Audit Commission's Report, 'Building in Quality', recommended that elected members should visit a sample of implemented planning permissions to assess the quality of decisions. This can improve the quality and consistency of decision-making and help with reviews of planning policy.
- 11.2 Visits to application sites previously considered by the County Council shall be organised in tandem with visits to current application sites, as appropriate. Briefing notes shall be prepared in each case.
- 11.3 Attendance at the review site visits shall be restricted to members of the committee and the local County Council member.

REFERENCES

The Local Government Association's revised guidance note of good practice (2002)

The Local Authorities (Model Code of Conduct) England Order 2001 (SI 2001/3575)

The Third Report of the Committee on Standards in Public Life (Nolan Committee) (1997)

Royal Town Planning Institute (RTPI) (1994) Code of Professional Conduct