

Part 5D - Code of Practice for Members and Officers Dealing with Planning Matters

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Code of Practice for Members and Officers Dealing with Planning Matters

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 should be sought on the interpretation of the Code of Conduct or this Code, where required.

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 Planning Committee, or (where appropriate) when involved on less formal occasions, such as meetings with officers or the public and consultative meetings.

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. The role of Members of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 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 general principles that underlie the Council's Code of Conduct for Members and apply to this Code of Practice are:
 - (a) Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
 - (b) Members should not place themselves in situations where their honesty or integrity may be questioned.
 - (c) Members should make decisions on merit.

- (d) Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
 - (e) Members 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.
 - (f) Members 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 judgment and for justifiable reasons.
- 1.5 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 and associated applications, the preparation of development plans and other planning policy and the enforcement of planning control.
- 1.6 This code is largely based upon the Local Government Association's Guidance entitled Probity in Planning for councillors and officers published in April 2013, which takes account of the ethical framework for local government. It takes account of the Royal Town Planning Institute's Code of Professional Conduct and advice issued by 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. In respect to the advice contained at paragraph 7 regarding Member engagement in pre-application advice, account has been taken of advice issued by the Planning Advisory Service, the Standards Board for England and the LGA advice leaflet 'Positive Engagement' issued in 2009.
- 1.7 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 judgment 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 should treat with extreme caution any offer of a gift or hospitality 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 their 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 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 (as amended).

3. Declaration of Interests

- 3.1 The Council's Code of Conduct advises members on the disclosure of interests and must be followed by Members at all times.
- 3.2 Where a member has a Disclosable Pecuniary Interest in an item of business, the member shall declare it at the earliest opportunity, must not participate in any discussion or vote taken on the matter at the meeting, must leave the meeting 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 an Other Relevant Interest in an item of business, the member shall declare it at the earliest opportunity. The member may make a representation on the item but will not be permitted to participate in any discussion or vote taken on the matter at the meeting. The member must leave the meeting once the representation has been made to avoid influence on those making the decision.
- 3.4 It is important that Members of Planning Committee do not fetter their discretion and therefore their ability to participate in planning decision-making by approaching the decision with a closed mind. Fettering your discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of bias, pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 3.5 Rules in relation to bias and predetermination were introduced by section 25 of the Localism Act 2011. The rules apply if there is an issue about the validity of a decision and it is relevant to that issue whether a member had or appeared to have a closed mind when making the decision. Under the rules a member is not to be taken to have had, or appeared to have had, a closed mind when making the decision just because they had previously done anything that directly or indirectly indicated the view the member took, or would or might take, in relation to a matter relevant to the decision.
- 3.6 The principle that members must not participate in decisions where they are perceived to be biased remains. An example would be a member who was a governor of a school which was putting forward a planning application.
- 3.7 Members should not act as agents for persons pursuing planning matters within their authority. 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, the Member shall inform the Monitoring Officer of the submission.

- 3.8 Officers must always act impartially. An officer, who believes they may be seen to have an interest in a planning matter shall declare it at the earliest opportunity to the Head of Planning and the Monitoring Officer and have no further involvement in the processing or consideration of that matter save for those instances set out at paragraph 3.3 above.
- 3.9 Planning officers shall never act as agents for persons pursuing a planning matter within the county or one outside significantly affecting the county.

4. 'Dual-Hatted Members'

- 4.1 The Council's Code of Conduct does not automatically prevent members from considering the same issue at more than one tier of local government, including speaking and voting at both tiers.
- 4.2 For example, if a member is also a member of a parish council, and the parish council is consulted on a planning application to be determined by the Planning Committee, the member may participate in the discussion and vote at the parish council meeting; but it would be prudent to inform the parish council that the member will reconsider the matter taking into account all the information that is put before the Planning Committee. At the subsequent meeting of the Planning Committee the member should declare that as a member of the parish council, they have already expressed a view on the matter, but make it clear that this view does not bind the member who will consider the matter afresh. The member will be free to participate in the debate and vote on the matter.
- 4.3 However, if the Planning Committee considers a planning application by an authority or body on which a member serves, then the member should declare an other relevant interest, take no part in the discussion and determination of the proposal and leave the meeting room while the discussion and voting takes place.

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

- 5.1 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.
- 5.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by private developers.
- 5.3 Members of the planning committee who sit on the board of a Council owned company which has submitted a planning proposal shall declare an other relevant interest, take no part in the discussion and determination of that

proposal and leave the meeting room while the discussion and voting takes place.

- 5.4 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.

6. Lobbying of and by Members

- 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 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.
- 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 and 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.
- 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 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.
- 6.5 Members of the planning committee shall not, in general, organise support or opposition for a proposal, or 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.
- 6.6 The local member who is not a member of the Planning Committee will be allowed to attend and speak at the decision-making meeting but not vote. The

member of an adjacent division 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 disclosable pecuniary interest or other relevant interest in an application, within the meaning of the Code of Conduct should seek prior advice from the Monitoring Officer about their position.

- 6.7 If a member of the Planning Committee identifies themselves with a group or individual campaigning for or against an application, they shall declare an Other Relevant Interest and not vote or decide on the matter. However, that member shall be given the opportunity to address the Committee.
- 6.8 Members of a Planning Committee must be free to vote as they consider appropriate on planning matters. Political group meetings prior to the Planning Committee meeting shall not be used to decide how members should vote at the meeting.

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 actively encouraged in accordance with the Council's protocol on pre-application advice. 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 Members need to preserve their role as impartial decision makers and should not ordinarily take part in pre-or post-submission discussions and negotiations with applicants regarding development proposals. The exception to this is for those major schemes which are considered to be of importance to the County or schemes that are likely to be highly contentious and are therefore subject to the Council's Pre-Application Member Engagement protocol which provides for structured arrangements with officers and a prospective developer.

Members must avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants.

- 7.6 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.

8. Officer Reports to Committee

- 8.1 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 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 including those made by the applicant. The Head of Planning in their report will give a reasoned assessment of the proposals and a justified recommendation.
- 8.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.
- 8.3 The Head of Planning will make available for inspection by members the full planning application, environmental statement (where required) and representations from bodies consulted and members of the public.

9. The Decision Making Process

- 9.1 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.
- 9.2 Members shall also 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.

- 9.3 Where an environmental impact assessment is required, the Planning Committee shall take the information provided in the report into consideration when determining the application.
- 9.4 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.
- 9.5 Where the Planning Committee decide to adopt the recommendation of the Head of Planning, the reasons contained in their report will be minuted, together with any additional reasons determined by the Committee.
- 9.6 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 Legal and Democratic Services.
- 9.7 Members who are not present at the meeting for the duration of the planning officers presentation, any subsequent representations and the entire Member debate shall not (save at the discretion of the Chair) be entitled to vote on the matter under consideration.

10. Site Visits by the Committee

- 10.1 A site visit is only likely to be necessary if:
- (a) the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers;
 - (b) the comments of the applicant and objectors cannot be expressed adequately in writing; or
 - (c) the proposal is particularly contentious.
- 10.2 Site visits will be organised in accordance with the following procedures:
- (a) The Head of Planning and Housing agree the need for a site visit in consultation with the Chair of the meeting.
 - (b) The Director of Legal and Democratic 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 Chair of the Planning Committee, the local County Councillor for the adjacent division will also be invited.

- (c) The Head of Planning and Housing will contact the applicant to make arrangements for the site visit where appropriate. As part of this contact the Head of Planning and Housing will invite the applicant to raise any safeguarding or other logistical issues associated with the visit as may be appropriate. This will ensure that those visiting the site have permission to enter private land if required and to enable the visit to be undertaken in a controlled manner, cogent of any safeguarding or wider logistical issues raised by the applicant.
- (d) The role of the applicant prior to the site visit is to make the Council and its representatives aware of any specific requirements in relation to the site visit, for example, the need to sign in before entering the site, wear appropriate PPE, visit during or outside certain hours.
- (e) 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.
- (f) Objectors will not normally be invited to attend a site visit or participate in any discussions on site.
- (g) On assembling at the site, at the time specified, the Chair (or lead officer in the absence of Chair and Vice 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 Head of Planning and Housing, or their representative, will explain the application as it relates to the site and relevant viewpoints. The Head of Planning and Housing, or their representative, will where practicable, make themselves known to the applicant, or their representative, and ensure the visiting party complies with all health and safety and safeguarding requirements as notified by the applicant. Following any questions to the Head of Planning and Housing (or their representative), the Chair will bring the site visit to a close.
- (h) When a site visit is held prior to the meeting of the Planning Committee it is desirable that all members attending the Planning Committee should also attend the site visit. Members 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.
- (i) In all cases the safety of those engaged in the site visit, and anyone else who may be at the site and affected by the visit, is of paramount importance. In cases where Officers consider a proposal is likely to generate hostility as part of a site visit or involve potential safeguarding matters the Head of Planning and Housing or their representative will

liaise with the appropriate Council representative to undertake a risk assessment ahead of the planned visit. Appropriate control measures will be identified as part of the risk assessment and discussed with the Chair in advance of the visit.

11. Representations on Planning Applications

- 11.1 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 Committee will be given the opportunity to inspect all letters received before the decision on the application is made.
- 11.2 There will be occasions when applicants, supporters, objectors, Ward Members and Parish/Town Council representatives or some of these, may wish to make representations in person to the Planning Committee. In such circumstances the following procedure will normally apply:
- (a) The applicant and any supporters 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. The applicant, supporters, objectors, Ward Members and Parish/Town Council Representative will also be informed that they have the right to attend the Committee meeting and make representations at the meeting. They will be asked to indicate whether they wish to do so and, if so, will be invited to the meeting at which the decision is to be made. However, except for Ward Members, any person wishing to exercise their right to make representations in person will be required to confirm by registering their intention to speak by noon two working days before the Committee Meeting to allow technical arrangements to be put in place. Persons registering their intention to speak after this time will only be permitted to speak at the discretion of the Chair.
 - (b) Ward Members and the Parish/Town Council representative will be afforded an appropriate amount of time (at the discretion of the Chair) within which to address the Committee.
 - (c) Each other group of speakers (objectors and applicants/supporters) will be allowed a maximum of five minutes (except at the discretion of the Chair) to address the committee. In the event that more than one person wishes to speak for or against a proposal the time will be divided. Groups of speakers will be encouraged to appoint a spokesperson and for this to be agreed in advance of the meeting where possible
 - (d) At the meeting the Officer will present their report first.

- (e) The Parish/Town Council representative will then address the Committee.
 - (f) The Ward Member will then address the Committee.
 - (g) The objectors will then make their representations, and may be asked questions by the Committee but will not be permitted to make representations more than once.
 - (h) The applicant/supporter will then make their representations and may be asked questions by the Committee but will not be permitted to make representations more than once.
 - (i) Officers may comment on the representations and the merits of the application.
 - (j) The Committee will proceed to debate the application and make a decision. The minute will include the reasons for the decision.
 - (k) New documents should not be circulated to the Committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising.
- 11.3 It is important that Members of planning committees do not allow members of the public to communicate with them during the committee's proceedings (orally, in writing or by social media) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- 11.4 Members of planning committees should also not participate in social media or exchanges by texting as a member of the committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias.

12 Review of Decisions

- 12.1 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.
- 12.2 Attendance at the review site visits shall be restricted to members of the committee and the local County Council members.