

**CODE OF CONDUCT FOR
MEMBERS &
OFFICERS DEALING
WITH
PLANNING MATTERS**

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1. Introduction

- 1.1 This code applies to all Members irrespective of whether or not they are a Member of a Committee responsible for determining planning applications and to all Officers.
- 1.2 This Code of Conduct is supplemental to the Members' Code of Conduct. Consideration must therefore be had to the relevant provisions of that Code, including in particular, the obligation on a Member not to use their position as a Member improperly to confer on or secure for themselves or any other person an advantage or disadvantage or put themselves in a position where they appear to do so. In the event of a complaint being made against a Member under the Member Code of Conduct, as part of any investigation regard is likely to be had to whether there was compliance with the provisions of this code in circumstances where it is relevant.
- 1.3 Although this code principally deals with the processing of planning applications and similar matters, its provisions also apply to the determination of land use allocations in the Local plan.

2. Pre-Application and Post-Application Discussions

- 2.1 Pre and post-application discussion can be of significant benefit to both the potential applicant and the Council. However, it is easy for such discussions to become, or seen to become part of the lobbying process on the part of the applicant.
- 2.2 The Localism Act 2011 has sought to recognize that Members can have a **useful** role to play in certain pre-**determination application** discussions, particularly having regard to their likely greater knowledge of local community interests. This guidance does not therefore seek to prevent any Member involvement prior to a determination of a planning application taking place. However, it does seek to reduce the likelihood of allegations of pre-determination and generally encourages a "no-shocks" approach; this form of approach is supported by the Planning Advisory Service. For Members of a committee that determines a planning application, it is recognised that it can be difficult to try and strike the right balance between being an active local representative and fulfilling the duty to approach all arguments in an open-minded way. This guidance seeks to give assistance in this respect, but striking this balance is ultimately the responsibility of each Member.
- 2.3 In order to avoid any perceptions of pre-determination, it should be made clear at the outset of any pre-application discussions (or indeed any discussions about a planning application), that nothing said will bind the Council to make a particular decision, and that any views expressed are purely personal and provisional. By their very nature such discussions will take place in the absence of all the relevant information.

- 2.2 So far as reasonably practicable, as a general rule of good practice, a written note should be made of all potentially contentious meetings and other discussions including telephone discussions, and should be followed up by a letter if there is any likelihood of substantive disagreement over the issue in the future. The object of such records is to ensure that someone not involved with the application will understand what the decision was and how it was reached.
- 2.3 If any Member or Officer is approached to provide advice, in most instances the best course of action will be to refer the person seeking such advice to a relevant planning Officer. Members of a committee that determine planning applications should be particularly careful when engaging in conversations of this nature as it could easily be misinterpreted as suggesting a pre-determined opinion and Members will not have all relevant information available to them at the time of such discussions. Such Members should therefore usually aim to confine any discussions to giving procedural advice only. Where Officers seek to provide planning advice, it should be made clear that such advice is informal and not binding on the Council, it should be consistent and should be based upon the development plan and material considerations.

3. Lobbying

3.1 Of Members

- (a) Lobbying, whether by applicants or objectors, is accepted as being a normal and proper part of the political processes. Lobbying can take the form of meetings, both private and public, formal presentations or correspondence. However, clearly it is important that it does not take effect to such an extent that it calls into question the impartiality and integrity of the planning process.
- (b) Members of a committee that determine planning applications ~~(which might include ward members)~~, should remain impartial if they intend to participate in a decision involving that application. Members can of course test the validity of any concerns in reaching their own conclusion about the merits of the application when all the information is before them at the committee meeting.
- (c) Invitations **aimed specifically at** Members appointed to a committee responsible for determining planning applications to attend a presentation or meeting give rise to a particular concern since, if accepted, they may encourage allegations that a Member is no longer impartial and appears to favour a particular person. ~~As a general rule therefore, the safest approach would usually be to decline any invitation to a presentation or meeting relating to a planning application that has been registered with the Council.~~ Where appropriate official Site Visits will be arranged by Officers.
- (d) ~~In certain circumstances~~ **Public** consultations, however, may be held in relation to an actual or proposed application **to gauge local opinion, support etc and** ~~Whilst~~ it is understandable Members ~~of involved in~~ committees that determine ~~planning applications~~ would wish to attend **to** and observe. ~~great care is needed as there is a high likelihood that the~~ Members are likely **will** be approached by applicants and/or objectors **and they will wish to avoid expressing their views. to express their views and either could give rise to allegations of bias.** ~~If a consultation is being held, Members should therefore think very carefully~~

~~whether it is really necessary for them to attend such an exercise or if some alternative might be available e.g. seeing whether a planning Officer might be able to visit. If a Member does attend such a consultation it is likely to be sensible for them to keep a note of any discussions they have at such a meeting and they should in any event consider identifying their attendance at the time when the application is considered.~~

- (e) As a general principle, where a Member of a committee ~~responsible for that~~ determining planning applications is approached in person by an applicant or by a third party (including other Members), they should always have in mind the principles relating to Pre-Application and Post-Application Discussions and Lobbying set out above. If such a Member thinks that their involvement in a pre-application discussion would be beneficial to the planning application process, then the most appropriate course of action would be to seek to discuss with a relevant planning Officer the possibility of whether a meeting which includes that Officer might be arranged. To ensure a consistent approach, Members should not seek to get involved in negotiations relating to a planning application. Officers should ensure a note is taken of any such discussion and placed on the public file.
- (e) If under whatever circumstance a person does try to orally lobby a Member with responsibility for determining a planning application, then the most appropriate course of action to avoid allegations of bias or a breach of natural justice will usually be to suggest that person write to the relevant planning officer to express their views and politely decline to engage in any discussion on the merits of the matter.
- (f) Members may often receive correspondence or other documentation from an applicant to a planning application or a third party. If the Member is the primary named recipient of such communications it will normally be desirable for that Member to seek to make arrangements to notify receipt to the Head of Service for Planning or such other Officer as s/he may nominate from time to time. Inevitably there will be many circumstances when a Member is not the primary recipient. There is no absolute rule to cover every eventuality that might arise in relation to correspondence of this nature and in many cases it may well be reasonable to assume that the communication has been received by the relevant planning Officer (indeed the Officer may have been copied in on the correspondence as well). However, the general overarching principle is to seek to ensure that all relevant representations are considered as part of an application and that is something Members ought to have in mind when considering how to approach such communications.

3.2 **By Members**

- (a) Members, particularly Ward Members, may often be approached to secure their support for a particular planning decision outcome.
- (b) Ward Members have an important role to play as representatives of their communities and to bring local information to the decision making process. Ward members may therefore become involved in discussions with Officers about individual applications. However, they should remember that it is very easy to create the impression that they are using their position to influence the progress of the application. Any discussions with Officers should be seen to be

open and above board. So far as reasonably practicable, Officers should seek to make a written note on the file of any such discussion.

- (c) Members of the Council should not seek to approach Members of a committee that determines a planning application with a view to orally lobbying them towards a particular favoured outcome.
- (d) If any Member, whether or not a Member of committee that determines an application speaks on behalf of a lobby group at the decision-making committee, they ~~would be well advised to withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that Members of the committee may have been influenced by their continuing presence.~~ Members should **always** have regard to the Member Code of Conduct ~~in this respect~~.
- (e) **Any representations or any address by a Member should relate to the planning merits of a planning application.**

3.3 Political group meetings

- (a) Given that the point at which the determination of a decision on a planning application is made cannot occur before its consideration by the committee responsible for the determination of that planning application when all available information will be to hand and has been duly assessed, any political group meeting prior to the meeting of the Committee should not be used to decide how members should vote.
- (b) Furthermore, the Ombudsman takes the view that the use of political whips at group meetings in the way described above may be maladministration.

4. Scheme of Delegation

4.1 Outline of Scheme

The detail of the Officer Scheme of Delegation is set out in the Constitution, but in general terms most significant planning applications are likely to be determined by a committee with power to determine such matters. The Officer Scheme of Delegation will be subject to review from time to time.

4.2 Applications by the Council or in respect of Council owned land

Applications submitted by the Council or made by any person in respect of Council owned land are to be considered and determined in the same way as any other application for planning permission.

4.3 Applications by Members and Officers

- (a) Whilst it is perfectly legitimate for any Member or Officer to submit a planning application, it can easily give rise to suspicions of impropriety unless handled properly. Accordingly, all such applications will be reported to and determined by a committee with responsibility for determining planning applications.

- (b) Any application from a Member or Officer should usually be identified as part of the registration process. However, Members and Officers are encouraged to draw the fact that such an application has been submitted to the attention of the Head of Service of Planning or any other Officers nominated by him/her for such a purpose in case it is not identified.
- (c) No Member or Officer who submits a planning application should participate in the decision making process relating to that application.
- (d) No Member or Officer who acts as an agent for people pursuing a planning matter with the Council should take part in the decision making process for that proposal, nor seek in any way to influence it.

5. Reports to and minutes of a Committee responsible for determining Planning Applications

- 5.1 All planning applications **falling failing** to be determined by a Committee responsible for determining planning applications shall be the subject of a written report from the Head of Service for Planning or any other Officer nominated by him/her for such purposes. The report should aim to be as accurate as possible and include a summary of the substance of objections and representations received, the relevant policies, identify any other material considerations including site or related history, contain an appraisal of the application and give a recommendation. Where the recommendation is contrary to policy or is a departure from the development plan the report should identify this and provide reasoned justification.
- 5.2 Verbal reporting (except to update a report) should be avoided so far as reasonably practicable and carefully minuted when it does occur.
- 5.3 Committee minutes should summarise key discussion points in respect of contentious applications.

6. Committee Site Visits

- 6.1 It is the responsibility of each Member to familiarize himself/herself with the location of any proposed development. This might well include seeking to view the site from areas that are accessible to the public. In no circumstance should a Member enter onto private land without the permission of the owner and occupier. If the owner or occupier is present the Member should bear in mind the advice in paragraphs 2 and paragraph 3 above.
- 6.2 Due to the delay caused to the determination of planning applications, site visits by a whole committee responsible for determining planning applications should only be considered where there is a clear and substantial benefit to the decision making process. This will usually arise only where the impact of the proposed development is difficult to visualize from both the submitted plans and other supporting material including photographs taken by Officers or an Officer's presentation. With this in mind, committee site visits should only therefore generally occur as an exception rather than a rule and a Member proposing a site visit at committee should be able to identify at committee the

reason(s) why s/he considers a site visit is necessary when called upon to do so.

- 6.3 To avoid being unduly intrusive and an inefficient use of the committee's time Officers will ensure that formal site visits are carefully organised with a clear purpose and format understood by all those who are present. Procedure notes to deal with such visits may be produced from time to time. Any extant procedure note produced for such purposes should normally be followed unless the Chairman or person presiding at the meeting determines otherwise.
- 6.4 ~~Committee site visits should aim to be conducted along the lines of those carried out by Planning Inspectors.~~ The purpose of the committee site visit is ~~to give all parties the opportunity~~ for the Officers to point out relevant features of the site or adjoining sites, or other physical aspects relevant to the consideration of the application. No attending party ~~if invited to attend~~ should ~~therefore~~ address Members ~~either individually or collectively~~ other than to address factual matters at the request of the Chair Members or Officers. Members should channel any questions they have through the Member presiding at the formal site visit or in accordance with such other arrangements that may otherwise have been agreed by the person presiding with the most senior Officer present.
- 6.5 A record will be kept of the reasons for the committee site visit and of what happened during that site visit. This will normally be by a Democratic Services Officer (if present).
- 6.6 No discussion about the merits of the application will take place before, during or after the committee site visit until the committee has formally reconvened for the specific purpose of determining the application.

7. Decision Making

7.1 General Principles

The principles referred to in the Articles of this Constitution concerning "Decision Taking" apply to the determination of planning applications.

7.2 The legal framework

- (a) Legislation requires the Council to have regard to the provisions of the development plan, so far as material to the application and to any other material consideration. Furthermore, the application is to be determined in accordance with the provisions of the development plan unless material considerations suggest otherwise.
- (b) The courts are the final arbiters of what is a material consideration, but any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration is material in any given case will depend upon the circumstances of the particular application.

7.3 No pre-determination / bias

- (a) The determination of a planning application is an administrative act, and the courts will strike down a decision where it is shown that the Council or Members sitting on a committee that determines a planning application were or gave the appearance of being biased or of having pre-judged the application. However, this does not mean that such a Member may not hold strong views on a particular application or issue, or indeed, express those views. However, in doing so a Member should make it clear that they are keeping an open mind until they have heard all the relevant considerations. A Member who sits on a committee that determines planning applications should never indicate how they intend to vote in advance of a meeting.
- (b) When making representation on behalf of their **constituents residents** Members should make it clear **when** ~~that~~ it is their **constituents residents'** views and not their **member's** own that are being expressed. Furthermore, the aim of Members should be to seek to express representations on behalf of constituents in such a way that no individual or group feels that they have been unfairly represented.

7.4 **Determination of applications contrary to Officer's advice**

- (a) Decisions should be based on any written report prepared by officers. Members are not obliged however to accept and follow the professional advice given by officers. Nevertheless, when members are minded to determine an application contrary to the officer recommendation they should ensure that they have sound planning-based reasons for doing so and clearly set them out in advance of voting. Such reasons must be capable of being justified objectively, including where relevant by reference to Development Plan policy. Where the reasons (i.e. the reason for departing from the Officer recommendation), being advanced are complex or need to be the subject of careful drafting/minuting, then consideration may be deferred to a later meeting. For the avoidance of doubt, this applies both to those applications recommended for approval and subsequently refused; and to those recommended for refusal and subsequently approved.
- (b) Before a vote is taken, the person presiding at the meeting of the committee determining the planning application should ensure that the Officer is given the opportunity to explain the likely implications of any subsequent decision.
- (c) When members decide to determine an application contrary to the officer's recommendation a detailed minute will be taken, stating the reasons and if those reasons are based on development plan policies, identifying the relevant policies and stating in what way the application supports or infringes those policies.

8. **Interests**

8.1 **Fundamental principle**

It is a fundamental principle that those who have a significant interest in the outcome of a particular planning application or enforcement matter should not make decisions in relation to that application or matter. This applies to members and officers alike.

8.2 Declaration

- (a) The Member Code of Conduct forms part of the Constitution. Declarations and attendance at an item considering a planning application should be made in accordance with the Member Code of Conduct having regard to any relevant dispensations that may have been granted.
- (b) Notwithstanding the existence or otherwise of a dispensation, Members should still have regard to all relevant facts concerning their relationship to, or conduct in respect of, an application (or parties associated with it). Issues that could be relevant to such a consideration could include:
 - (i) a strong association with the application or applicant (e.g. the applicant is a close relative, or the Member has had previous acrimonious personal dealings with the applicant); and/ or
 - (ii) a Member's conduct specifically relating to a possible outcome of the application.

Where a Member of a committee that determines an application considers that having regard to all such facts a reasonable and fair minded observer could conclude that they were bias / had a closed mind to the application then the Member should not take part.

- (c) Officers who discover that they have an interest in a planning matter should cease to act and report the interest to their immediate manager who will reallocate the matter to an officer without an interest in it. The Officer having an interest will not take part in any part of the decision making process in respect of that matter.

8.3 Monitoring Officer to advise

Members who are unsure whether to declare an interest should seek advice from the Monitoring Officer, although the final decision whether to make a declaration and or to withdraw from the meeting will always be one for the member.

9. Post determination Reviews

- 9.1 The Head of Service for Planning or such other Officer as s/he may nominate may, from time to time select a sample of implemented planning permissions to be reviewed by a committee with a scrutiny role to assess the quality of the decisions made by both the Planning Committee and Officers under delegated powers. The review will focus upon whether policies or practices are being applied consistently and whether there is a need for policies and practices to be reviewed.

10. Member Training

- 10.1 Town and Country Planning is a specialized field and both the Local Government Association and the Royal Town Planning Institute place particular emphasis on the need for members to have an adequate knowledge of the planning process. Whilst the council will seek to provide some training, Members have a responsibility to ensure that they understand the fundamental principles and keep up-to-date with developments.

10.2 Seminars will usually be arranged for Members at such times as there is a change in the composition of the committee with primary responsibility for determining planning applications and at such other times as the Head of Service for Planning considers appropriate

10.3 The Head of Service for Planning will arrange when s/he considers it relevant for briefing papers to be prepared for Members so that Members are kept fully up-to-date on developments in the planning process.

11. **Officers**

11.1 **Generally**

Much of the planning officer's work is done behind the scenes before an application reaches committee. Officers engaged in dealing with planning applications carry a very heavy caseload that involves dealing on a day to day basis with applicants, objectors, members and professional agents. It is the sole responsibility of the Officers to deal with such operation matters.

11.2 **Officers' professional obligations**

Many planning officers are Chartered Town Planners and are bound by the Code of Professional Conduct of the Royal Town Planning Institute that imposes certain professional obligations including conflicts of interest and

continuing training. Breaches of that code may be subject to disciplinary action by the RTPI.

11.3 **Employees Code of Conduct**

The Constitution contains an Officer Code of Conduct to which Officers should have regard whilst conducting business of the Council.