

## Part 4 – codes & protocols

### g. code of conduct and guidance for members of the Planning Committee

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#### 1. Introduction

- 1.1 The purpose of this code is to ensure that the manner in which planning decisions are reached is, and is seen to be, fair, open and impartial and that only relevant matters are taken into account.
- 1.2 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst councillors should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 1.3 A councillor's overriding duty is to the whole community and to ensure that decisions are taken impartially, fairly, reasonably and only in the context of the development plan and all other material considerations.
- 1.4 The code applies to the determination of planning applications, and any other matters which fall within the responsibility of the committee as set out in the constitution. This code is in addition to the councillors' code of conduct and council procedure rules, to which members' attention is drawn.
- 1.5 Failure to comply with the code could give rise to judicial review of the decision reached and would be taken into account in any relevant ombudsman report.

#### 2. Lobbying and contact with applicants and third parties

- 2.1 Councillors should not express an opinion which could be taken as indicating they have already decided how they will vote before they have been exposed to all the evidence and arguments at the relevant committee meeting. Whilst lobbying is a normal and perfectly proper part of the planning process, care must be exercised to ensure that the impartiality and integrity of a councillor is not called into question and the application or matter is not prejudged.

- 2.2 Members of the Planning Committee should avoid organising support for, or opposition to, a planning application and should avoid lobbying other councillors or influencing officers to make a particular recommendation.
- 2.3 Members should avoid acting on behalf of applicants or third parties.
- 2.4 It should, in general, be possible for a member to give support to a particular body of opinion whilst making it clear that he/she will not reach a final decision until the matter comes before the committee. This would then enable the member to take part in discussion and voting on the matter.
- 2.5 Subject to the above, nothing in this code inhibits a councillor's right to put forward the views of the electorate at the committee and to support them if the councillor wishes.
- 2.6 Discussions between a potential applicant and the council prior to the submission of an application can be of considerable benefit to both parties and is encouraged. However, it would be easy for such discussions to become, or to be seen to become, particularly by objectors, part of a lobbying process on the part of the applicant.
- 2.7 In order to avoid such perceptions, pre-application discussions should take place within clear guidelines. Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken:
  - 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 personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place
  - Advice should be consistent and based upon the development plan and material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. In addition, all officers taking part in such discussions should make clear whether or not they are the decision-maker
  - Any advice given should not be, nor be seen to be, partial to the applicant or anyone else;
  - Where councillors are involved in discussions with the applicant before the matter is determined by the committee, a planning officer should always be present. It should 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 personal and provisional and that councillors will not decide how to vote until the committee meeting.
3. Councillor applications
  - 3.1 The consideration of a proposal from a councillor in such circumstances would be considered as a pecuniary interest under the code of conduct and as such, the councillor would be required to withdraw from any consideration of the matter. A councillor should not seek improperly to influence a decision about the matter. It is important to emphasise here that 'improperly' does not imply that a councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a committee.
  - 3.2 Where a councillor applies for planning consent as applicant or agent, he/she should notify the Monitoring Officer, in writing, as well as declaring an interest and taking no part in determining the application or lobbying. Such applications shall be determined by Planning Committee in all cases.

4. Planning Committee site visits
  - 4.1 Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial.
  - 4.2 They should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit.
  - 4.3 Many councils allow site visits to be 'triggered' by a request from the ward councillor. It is acknowledged that this is a proper part of the representative role of the member, and should normally be acceded to, although the 'substantial benefit' test should still apply. It is also good practice to keep a record of the reasons why a site visit is called.
  - 4.4 A site visit is only likely to be necessary if:
    - The impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance)
    - There is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
  - 4.5 Site visits shall be conducted as follows:
    - The applicant, his/her agent, the ward member(s), all Planning Committee members and a parish council representative will be invited to attend
    - The chairman shall take charge of the proceedings with the support of an officer
    - The chairman shall ask for any declarations of interest
    - Members shall group around the chairman promptly on site during the factual presentation and explanation of the case and any comments made by invitees, in order to permit clear and efficient interchange of question and answer
    - Care should be taken not to express views which could be construed as indicating the way members intend to vote on the proposal at committee
    - Following factual presentation by the officer in attendance, the Chairman will ask Planning Committee members in attendance (and if applicable, the parish council representative) if they require any points of fact clarified. At this point the chairman will direct the officer to respond to such requests from Planning Committee members (and the parish council representative when applicable) and the officer may ask the applicant/agent (if available) to respond to any request for factual clarification. The applicant/agent should not attempt to discuss any other issues relating to the proposal (for example, its merits) or express any opinion thereon. Requests for points of clarity must not extend to general discussion of a proposal and must focus on the clarification of such matters as interpretation of plans, confirmation of siting and levels etc. No other dialogue should take place between Planning Committee members and any others attending at the site visit.
5. Declarations of interest
  - 5.1 The requirements for declarations of interest by members are contained in the code of conduct and the test of pecuniary interests apply to planning issues in just the same way as they apply to other non-planning matters.
  - 5.2 The requirement in respect of the disclosure of interests (and non-participation in the case of pecuniary interests) applies to site visits as well as meetings of the committee itself.

- 5.3 Where a member of the Planning Committee has declared a pecuniary interest they may not take any part in the meeting, including speaking as ward councillor.
6. Decision making
- 6.1 Members should recognise that in sitting on the Planning Committee or attending site visits they have a duty to act fairly and without bias. Members should therefore consider all relevant matters and not take into account non-planning considerations and any irrelevant material.
- 6.2 Planning applications are to be determined in accordance with the Local Development Plan/Framework and all other material considerations. Material considerations are matters which relate to the development and use of land in the public interest. They must be fairly and reasonably related to the matter concerned, and will include the number, size, layout, siting, design and external appearance of buildings, means of access, landscaping, impact on the neighbourhood and the availability of infrastructure. Government planning policy, council supplementary planning guidance and similar would also be included.
- 6.3 Unless there are material considerations of sufficient weight to do otherwise, applications must be determined in accordance with the approved Local Development Plan. Third party views may be taken into account as long as they relate to material considerations. Local opposition or support is not a reason in itself for determining an application. The weight given to the applicant's personal circumstances should be minimal and are only likely to be decisive in balanced cases.
- 6.4 Decisions should not be taken on the basis of party political influence or group politics, despite the fact that each committee is politically constituted. In particular, political group meetings should not be used to decide how councillors vote on matters taken to Planning Committee. Each councillor should independently consider the matter without any undue influence. The council has determined that no political whipping will be applied to considerations of the Planning Committee.
- 6.5 Borough councillors who are also parish or county councillors may be entitled to speak and vote on issues which have previously been discussed in their capacity as parish or county councillors but they must not do so where their own parish or the county council is making a planning application.
- 6.6 It may be preferable for members to abstain from voting on the matter at parish or county level, but if they do vote at that stage, they should make it clear they may vote differently at committee when they will be in full possession of all the facts and officer advice.