

CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

Background

1. Planning decisions have extra rules and procedures because of the way that individual rights may be affected. This advice is not just for those members of the Development Control Committee or members of other committees that make decisions on planning matters – but all members involved in activities relating to the planning process. This includes decisions on policy as well as development control matters.

Introduction – The Need for Guidance

2.
 - (1) This Code has been written to help everyone understand the standards required of the Council in carrying out its planning function.
 - (2) Planning is not an exact science. Rather, it relies on informed judgement within a clear policy context. It is also highly contentious because its decisions affect the daily lives of everyone and the private interests of individuals, land owners, and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions) and the legal nature of development plans and decision notices. It is important, therefore, that the process is underpinned by open and transparent decision-making.
 - (3) The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.
 - (4) In performing its role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore, that the Council should make planning decisions affecting these interests openly, impartially, with sound judgement, and for justifiable reasons. The process should leave no grounds for suggesting, with any justification, that a decision has been partial, biased, or not well-founded.
 - (5) The aim of this Code of Practice is, therefore, to ensure that the Council operates an open and fair system. Failure to follow this Code of Practice, without good reason, could be taken into account during investigations into possible maladministration.

- (6) Councillors and staff are requested to read this Code thoroughly and put it into practice consistently. It is intended to review the Code regularly so that it remains useful and relevant. If any points are unclear or need review, please contact the Head of Planning and Transport or the Head of Legal and Democratic Services who will be pleased to help you. Officers may need to seek further advice from the Head of Corporate Governance.

Advice for all Councillors and Officers

3.
 - (1) Councillors and officers have different, but complementary roles. Both serve the public but Councillors are responsible to the electorate, while officers are responsible to the Council as a whole. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other's position. This relationship, and the trust which underpins it, must never be abused or compromised.
 - (2) The public is entitled to expect high standards of conduct and probity by all people holding public office and, in particular, when dealing with planning matters. Only material planning considerations should be taken into account. There are statutory provisions and codes setting standards which must be followed.
 - (3) The Members' Code of Conduct provides guidance and standards for Councillors. Breaches of this Code are dealt with by the Council's Standards Committee. The Code states that, while Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. Councillors should not favour 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. Councillors must, therefore, represent their constituents as a body and vote in the interests of the whole Borough.
 - (4) Whilst this Planning Code of Practice deals primarily with planning applications, its principles also apply to consideration of Regional Spatial Strategies, Local Development Frameworks, Local Plans, Supplementary Planning Guidance, Development Briefs, enforcement cases and all other planning matters. An overriding principle is that, when local authorities are dealing with planning matters, they should only take into account material planning considerations.
 - (5) Members should be aware that officers must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 imposes political restrictions. In addition, officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's Code of Professional Conduct. Breaches of the Institute's Code may be subject to disciplinary action by the Institute.

- (6) Section 38(6) of the Planning and Compulsory Act 2004 established a plan-led system whereby all planning applications are determined by primary reference to the Development Plan. Thus, if the Development Plan is material to the application, the statutory requirement is that the application should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- (7) A further key principle is that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is based upon valid planning reasons and concerns which can be sustained.
- (8) Following Council elections, a range of seminars is held for Councillors. Guidance is given on the Code of Conduct, and on planning matters. In addition, regular seminars, updates and workshops are offered in relation to planning regulations and procedures, the Local Development Framework, and the practical operation of the Codes of Practice.

Predisposition, Predetermination / Bias

4. (1) There is an important difference between those Councillors who are involved in making a decision and those Councillors who are seeking to influence it. This is because Councillors who are not involved with making a decision are generally free to speak about the outcome that they wish to see in relation to the decision that is being made.
- (2) When considering whether there is an appearance of predetermination or bias, Councillors who are responsible for making the decision should apply the following test: would a fair minded and informed observer, having considered the facts, decide there is a real possibility that the Councillor had predetermined the issue or was biased?
- (3) Predisposition is where a Councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the council meeting. This includes having formed a preliminary view about how they will vote before they attend the meeting, and / or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue. Members of the Development Control Committee can form a predisposition to a planning proposal but in doing so would need to carefully follow the advice and guidance laid out in this Code of Practice.
- (4) Predetermination or bias can lead to problems. It is where a Councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.
- (5) Councillors must not even appear to have already decided how they will vote at the meeting, so that nothing they hear during the course of

discussion and debate will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

- (6) Rarely will membership of an organisation, such as a national charity, amount to predetermination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a Councillor is involved in making.

Gifts and Hospitality

5. (1) Gifts and hospitality are considered in the Council's Code of Conduct for Councillors and Officers Code of Conduct. Members and officers should be particularly mindful to the perception that could be formed by a third party, if accepting a gift from an applicant or a potential developer.

Private work or interests of officers

6. (1) Officers must always act impartially and seek permission from the appropriate senior officer for any private work or interest which they wish to take up. The Council will review regularly the outside activities declared by its officers, and the restrictions placed upon such activities by the Council.

Dealing with personal and prejudicial Interests

7. (1) This is covered in detail in the Council's main Code of Conduct. It is strongly advised that this is read in parallel to this advice. Interests can be personal where it is an interest that you must have declared in the register of members interest, (defined in the Code of Conduct) or an interest which is not in the register of interest but where the well being or financial position of you, members of your family, or people with whom you have a close association, is likely to be affected by the business of the Council more than it would affect the majority of inhabitants of the ward affected by the decision.
- (2) A prejudicial interest are interests which are also personal interests in a matter if all of the following conditions are met: (i) the matter affects your financial interests or relates to a licence or regulatory matter and (ii) a member of the public who knows the relevant facts, would reasonably think that your personal interest is so significant that it is likely to prejudice your judgement of the public interest.
- (3) Further guidance and details on personal and prejudicial interests can be found in the Code of Conduct and advice can be obtained from the Council's Monitoring Officer.
- (4) Councillors who are unsure whether an interest should be declared should seek the advice of the Council's Monitoring Officer, although the

final decision rests with the Councillor. Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Development Control Committee.

- (5) Further advice on these matters is available from the Head of Legal and Democratic Services.

Development Proposals Submitted by Councillors and Officers and Council Development

8.
 - (1) If an application has been made by a Councillor or one of their family or friends, that Councillor should not vote or speak on the application and should withdraw from the meeting. Members would not themselves be able to use the Council's public participation scheme to present in favour of their own application – or ask another member of the family or friend to present on their case. However, their agent can speak on their behalf. The Code of Conduct specifically states that you must not seek to influence improperly a decision in which you have a prejudicial interest and it could be seen that by speaking on your application or having a family member or friend speaking for you, you have not taken this advice and are open to a complaint.
 - (2) A judicial review of the decision, say to approve planning permission, may result from an interested party should they feel that there had been some inappropriate influence in the decision making process. On this basis, Members who do not adhere to the advice, run the risk of having their own permissions challenged and the possibility of the decision becoming quashed.
 - (3) A Councillor who has acted in a professional capacity for any individual, company, or other body pursuing a planning matter should not vote or speak in relation to that matter and should withdraw from the meeting.
 - (4) Ideally, all applications on behalf of Members or officers should be submitted by a professional agent to avoid partiality and contact with officers dealing with the application. The Council's Monitoring Officer should be notified of all such proposals, as soon as they are submitted.

Applications submitted by the Council for its own development.

9.
 - (1) Applications made on behalf of the Council for its own development must be determined in an identical manner to applications made by the general public and the same planning policy considerations applied.
 - (2) The Council's current practices and procedures achieve this with identical consultation and publicity in relation to the application.

- (3) Decisions must be made strictly on planning merits and without regard to any financial or other gain which may accrue to the Council if the development is permitted.

Lobbying of Councillors and Lobbying by Councillors

10. (1) It is essential for the proper operation of the planning system that local concerns are adequately aired. The most effective and suitable way this can be done is via the local elected representatives. However, such lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a Councillor being called into question.
- (2) When dealing with the public, it is quite proper for Councillors to give factual information, advice as to the process and procedures followed by the Council, and who to contact in the Council for further information. Equally, it is appropriate for a Councillor to report the public's views, either to officers or to the Committee, but it would be wrong for the Councillor to put pressure on officers for a particular recommendation to Committee.
- (3) Councillors who are not on the Committee or making a decision on a planning matter can express a view about the proposal but should ensure that they have relevant information before them which may include hearing comments from all parties concerned. Members should make it clear that they are not part of the decision making process to interested parties and that although a Member may have a certain view, it will be for the determining body to make the final decision.
- (4) For Members of the Committee and for those Members making decisions on planning matters, when being lobbied, Councillors should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, Members are advised that they should not indicate a predetermination of the application and should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee.
- (5) Individual Councillors should reach their own conclusions on a planning matter, rather than follow the lead of another Councillor. In this regard, any political group meetings prior to a Committee meeting should not be used to decide how Councillors should vote. The view of the Ombudsman is that the use of political whips at group meetings in this way is contrary to the National Code of Conduct. Decisions can be taken only after full consideration of the officers' report, and information and discussion at Committee.
- (6) A Development Control Committee Councillor who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place.

If the Councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Councillor to argue convincingly, when the Committee comes to take its decision, that they have carefully weighed the evidence and arguments presented at Committee. The proper course of action for such a Councillor would be to make an open declaration, to leave the Committee room and not to vote. Accordingly, a Councillor, who is a member of the Development Control Committee, should avoid organising support for or against a planning application if they intend to participate in its determination at Committee.

Pre-Application Discussions

11. (1) 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 by the Local Government Association. Discussions can take place for a variety of reasons, for example: to establish whether an application can be improved in design, to overcome planning objections, to meet relevant neighbour concerns and raise matters of community interest. Early member involvement can maximise the value of member input into the decision making process.
- (2) It should always be made clear at the outset that pre-application discussions will not bind the Council to make a particular decision, and that any views expressed are provisional, until all relevant information is submitted and consultations on it have taken place.
- (3) Pre-application submissions are treated as confidential submissions. Many cases involve commercial sensitivities and it would not be appropriate for officers or Members to break such confidences by making submissions public.
- (4) The Council's Statement of Community Involvement seeks to encourage developers to undertake consultation prior to the submission of a planning application to include engagement with ward Councillors, Parish and Town councils and neighbours.
- (5) Pre-application advice should be consistent, and based on the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies between planning officers. All officers taking part in such discussions should make it clear whether or not they will be the officer responsible for handling any subsequent application and explain the decision making process to include who makes the final decision on a planning application. Planning officers will ensure their advice is impartial, and seen to be such. A note should be made of all meetings and telephone calls. Where material has been left with the Council, confirmation of its receipt should be given in a follow-up letter.

- (6) When attending public meetings and site visits, Councillors should take great care to maintain their impartial role as a Councillor, listen to all the points of view expressed by the speakers and public. Those members on Development Control Committee should not predetermine the proposed application.
- (7) Members should always involve officers and set out a structure for the discussions with developers.
- (8) If Councillors consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer who will, in turn, advise the appropriate officers.
- (9) Councillors who also serve on Parish Councils may need to clarify their separate roles in each Council regarding Basingstoke and Deane Borough planning policies. The public and other interested parties should be clear at all times when the Councillors are acting as a Parish Councillor and when they are acting in their role as a Borough Councillor.
- (10) As a community leader and local representative you will want to be involved in public meetings and pre-application discussions. However, this may create some risks for Councillors, particularly those who are members of the Development Control Committee, and for the integrity of the decision making process. Guidance is set out in the LGA and Planning Advisory Service guide 'Positive Engagement'

Do:

- Always involve officers and structure discussions with developers
- Inform officers about any approaches made to you and seek advice
- Familiarise yourself with the Council's Code of Conduct
- Keep your register of interests up to date
- Be aware of what predisposition, predetermination and bias mean in your role – ask your Monitoring Officer and refer to the Standards Board Occasional Paper on Predetermination, Predisposition and bias if unsure
- Be prepared to hold discussions with an applicant and your officers before a planning application is made, not just after it has been submitted to your authority
- Preface any discussions with disclaimers, keep a note of meetings and calls and make clear at the outset that discussions are not binding
- Be aware of what personal and prejudicial interests are – refer to your Monitoring Officer and the Standards Board's website if you are unsure
- Recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- Stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- Use meetings to show leadership and vision

- Encourage positive outcomes
- Ask for training on probity matters
- Recognise that you can lobby and campaign but that this may remove you from the decision making process
- Feed in both your own and your local community's concerns and issues
- Be aware that you can engage in discussions but you must have and be seen to have, an open mind at the point of decision making

Do not:

- Use your position improperly for personal gain or to advantage your friends or close associates
- Meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a 'friendly' private discussion with a developer could cause others to mistrust your impartiality
- Attend meetings or be involved in decision making where you have a prejudicial interest under the main code of conduct – except when speaking when the general public are also allowed to do so
- Accept gifts or hospitality
- Prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal
- Seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- Compromise the impartiality of people who work for your authority
- Invent local guides on probity in planning which are incompatible with current guidance – look for commonly held and common sense parallels in other authorities or the principles set out in the national guidance.

Officer's site visit

12. (1) The case officer's site visit is a fact finding exercise to allow a careful assessment of what is proposed and what impact it will have on the surrounding area and any neighbouring properties. The site visit also allows the officer to check that notification procedures have been carried out to include neighbour notifications and the display of a site notice.
- (2) Officers may be asked by neighbours and adjoining land owners to visit the property next door to the application site to assess the impact of the development. There is no requirement for officers to carry out such a visit, if the impact of the proposal can be adequately assessed from the application site itself. Members should not agree to commit officers to carrying out such visits or encourage neighbours to attend officer's site visits.

Officer Reports to Committee

13. (1) Certain applications are dealt with under a Scheme of Delegation, which gives clear guidelines on when applications will be determined by the Head of Planning and Transport. The remainder are dealt with by the Development Control Committee and are the subject of reports contained within schedules of applications on the agenda.
- (2) The reports must give a clear explanation of the relevant history, site, and the Development Plan policies, and any other material considerations. The report must conclude with a recommendation which should be fully justified by the rest of the report. This is particularly important where the recommendation is for permission to be granted where the proposal is contrary to the Development Plan but where other material considerations have been taken into account.
- (3) Oral reporting (except to update a report) should be extremely rare. Additional information on items on the agenda received after the agenda papers have been prepared will be included in an 'Update Report' to be tabled at the meeting.
- (4) Development Control Committee's decisions should be properly minuted. Where a decision to grant or refuse permission contrary to the officer recommendation occurs the reasons for such a decision taken by Committee should be clearly minuted. A copy should be placed on the application file. The Planning Officer should also be given the opportunity to explain the implication of the contrary decision. The Courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds.
- (5) Where Councillors wish to add or amend conditions or reasons for refusal, the general content will be agreed at the meeting before the vote is taken and the final wording will generally be delegated to the Head of Planning and Transport.

Committee Site Viewings

14. (1) The purpose of a site viewing is for Members of the Committee to gain knowledge of the application site and its relationship to adjacent sites. A decision by the Chairman of the Development Control Committee to carry out a site viewing should only be made where there are real benefits to be gained and where objective decisions could not be taken without such a visit. A site viewing is only likely to be necessary if:
 - (a) the impact of the proposal is difficult to visualise from the plans and any supporting material, including photographs taken by officers; or
 - (b) there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing; or
 - (c) the proposal is particularly contentious.

- (2) A Ward Member may request that a site viewing is held, by using the relevant proforma in advance of the meeting and clearly stating the reasons for the request. Ward Members who are on the Development Control Committee should ensure that their request does not indicate or imply that they have predetermined the proposal. The proforma should be sent to the Development Control Manager. Requests for viewings at the Committee meeting should be avoided where at all possible.
- (3) Written requests for site viewings should be agreed between the Chairman of the Development Control Committee and the Development Control Manager in advance of the Committee meeting. If no agreement can be reached then a request should go to the Development Control Committee for determination.
- (4) The site viewing should consist simply of a site inspection, led by the Chairman, with officer assistance, and should be attended only by Members of the Development Control Committee, relevant Ward Members and Officers, save that in parished areas a properly accredited Parish/Town Council representative may also attend. The applicant or their representative is also permitted to be present to assist with points of clarification only.
- (5) No discussion of the merits of the case should take place during the site viewing. The Chair should clarify who is present on site and ask that the Officer present the application. Ward Councillors and the Parish/Town Council representatives should also be asked if there are particular points that they wish to be examined on site. No lobbying should occur and no opinions should be put forward by these persons. The points made should be factual. The applicant, their agent or any objectors shall not be permitted to present a case at the viewing.
- (6) No decisions are made at the site viewings. It is essential that Members and Officers ensure that those attending are not led to believe that a decision has been taken on the spot, or that conclusive views have been reached.
- (7) Following the site viewing, officers will prepare a note of any relevant information obtained from the Site Viewing to add to the report on the application.

Public Speaking

15. (1) Procedures for public speaking at Development Control Committee are separately available. Public speakers are allotted a specific time to present their comments and observations on a planning application. Public speakers are not permitted to show visual material to the Committee.

Complaints and Record Keeping

16. (1) In order that complaints can be fully investigated, record keeping on planning matters should be complete and accurate. In particular, every planning application and enforcement file will contain an accurate account of events throughout its life.
- (2) Where a planning application is dealt with under the delegation procedure, a complete record will be kept of the planning considerations taken into account in determining the application.

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