

CODE OF GOOD PRACTICE FOR COUNCILLORS AND OFFICERS INVOLVED IN DETERMINING PLANNING APPLICATIONS

INTRODUCTION

1. This Code of Good Practice applies to both councillors and officers. The successful operation of the planning system relies on mutual trust and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

THE NEED FOR GUIDANCE

2. Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also contentious because its decisions affect the daily lives of everyone and the private interests of individuals, landowners and developers. It affects land values. All this is heightened by the openness of the system and the legal nature of development plans and decision notices.
3. It is important therefore that the process is characterised by open and transparent decision making. With any application which has been refused or approved in the face of opposition, the decision may well be the subject of detailed scrutiny. Any question of a procedural defect, impropriety or misconduct, whether warranted or not, may lead to an application for judicial review or a complaint to the Local Government Ombudsman of maladministration. Even if not taking such action, the aggrieved party may attempt to convince others that the decision was flawed. As a result, the planning process must not only be fair, it must be seen to be fair.

STATUS OF THE GUIDANCE

4. The recommendations in this code are based upon the Authority's recently adopted Code of Conduct based on the Government's Model Code of Conduct for members, the findings of inquiries at Brent, North Cornwall, Warwick and Bassetlaw Councils, advice from the Local Government Association, the Audit Commission, the Ombudsman and the National Planning Forum together with the Royal Town Planning Institute's Code of Professional Conduct.

The terms in this Code of Good Practice apply to the operation of Area Committees and to full council when making a planning decision

THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

5. Councillors and officers have different, but complementary roles. Both service the public but councillors are responsible to the electorate, while officers are responsible to the Authority as a whole. As a general rule, instructions will usually be given to officers through a Council, Executive Board or committee decision.

6. Both councillors and officers are guided by codes of conduct. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute (RTPI) Code of Professional Conduct. The Code of Conduct supplemented by guidance from the Standards Board provides standards and guidance for members. Employees will in due course be subject to a statutory Employees' Code of Conduct
7. The Code of Conduct addresses in general terms a range of aspects of a member's conduct in carrying out official duties. It relates to the whole range of those duties, and is not function specific. The Authority's Code of Conduct sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Authority business, including the need to register and declare interests but also appropriate relationships with other members, staff and public.

This Code of Good Practice in Planning Matters is both supportive of the thrust of the Code of Conduct and the source of expanded guidance in particular areas of planning.

8. 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 strongly held by those involved. While 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.
9. While councillors may be strongly influenced by the views of others, and of their political group in particular, it is their responsibility alone to decide what view to take on any question which councillors have to decide. The Local Government Ombudsman has concluded that the use of whipped votes at group meetings, or reliance on party political loyalty, to compel a councillor to vote on a planning application in a particular way will amount to maladministration. The Court of Appeal has given judicial endorsement to this approach. Votes in Committee and Council on planning applications are a matter of individual conscience based on planning judgement and should not be influenced or controlled by whipped votes.
10. Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 imposes restrictions on their outside activities. The Authority has identified which of their officers are subject to these restrictions. This list is reviewed regularly. Staff paid on salary grade SO1 and above must also seek permission from their manager to carry out any private work.
11. Officers and members may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, the recipient should ensure it is of the minimal level and declare its receipt as soon as possible. The Code of Conduct requires any member receiving any gift or hospitality over £25 to notify the Monitoring Officer within 28 days of its receipt. The Monitoring Officer will maintain a register of such gifts which is open to public inspection. For officers, each Department maintains a hospitality book.

DECLARATION AND REGISTRATION OF INTERESTS

12. The Local Government Act 2000 and the Code of Conduct require members to register and declare their interests and the consequences for the member's participation in consideration of an issue, in the light of those interests. Ultimate responsibilities for fulfilling the requirements rests individually with

each Councillor. The register is maintained by the Monitoring Officer and is available for public inspection. Any changes must be notified within 28 days of a member becoming aware of such changes.

13. A personal interest in a matter arises if a member anticipates that a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend, or
- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
 - any of the bodies with which the member is associated, and which he or she will have registered in the register of interests.

Where a member considers that he or she has such a personal interest in a matter, he or she must always declare it, but it does not then necessarily follow that the personal interest debars the member from participation in the discussion. If the member remains for the discussion the full nature of the interest must be declared.

14. The Code provides that a personal interest becomes a prejudicial one if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the member's judgement of the public interest.

If a member has a prejudicial interest, he or she should not participate in a discussion on the matter and must withdraw from the room and must not seek to influence a decision in the matter. In the case of a prejudicial interest, the member need not declare the nature of the interest, merely that it exists.

15. The Code will include some exceptions to this. If the matter under discussion relates to:
- another authority of which the councillor is a member;
 - another public authority in which he or she has a position of general management or control;
 - a body to which he or she has been appointed or nominated as a representative of the authority;
 - housing or education matters where the councillor is a tenant or has children at schools in the Authority's area.

then in these circumstances, the interest should not be regarded as prejudicial. In practice, therefore, the member would need to declare the interest, but may participate.

16. The emphasis is on consideration of the status of the interest in each case by the councillor personally. Included in that judgement is a consideration of the perception of the public acting reasonably and with knowledge of the facts. Translated into a councillor's involvement in planning issues, the two stage test of personal and prejudicial interests will require each councillor to abstain from involvement in any issue the outcome of which might advantage or disadvantage the personal interests of the councillor, his or her family, friends or employer.
17. In a planning context the exceptions made in the Code of Conduct to the definition of prejudicial interest relating to membership of outside bodies will require the exercise of particular judgement on the part of councillors. The Code will operate only where the member has scrupulously avoided forming a fixed view on the issue in advance.

18. Given the significance of judgements by members on declarations of interest generally and particularly in a planning context, at least once a year the Authority will expect members to attend training seminars. Advice on the declaration of interest is always available to members from the Monitoring Officer and the Chief Executive.
19. Advice on the need for employees to declare an interest is contained in the Staff handbook.

DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS, AND COUNCIL DEVELOPMENT

20. Applications to their own Authority by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety.
21. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving councillors and officers should never act as agents for people pursuing a planning matter with their Authority.
22. Should serving councillors submit their own proposals to the Authority on which they serve, they should play no part in its processing.
23. The Monitoring Officer should be informed of such proposals. The officers' report on that matter should be able to state that the Monitoring Officer can confirm that the matter has been processed in the normal way. An officer submitting an application will have an interest in that application. He or she must also declare an interest if present at the meeting at which the application is discussed.
24. Applications submitted by councillors or officers will always be determined by an Area Committee or the Strategic Development Control Committee and not under the Strategic Director's delegated powers.
25. Proposals for the Authority's own development should be treated in the same way as those of private developers, in accordance with government circular advice, particularly in relation to officers' advice. Planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Authority if the development is permitted. It is important that the Authority is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.

LOBBYING OF AND BY COUNCILLORS

26. Lobbying, which can be defined as an approach to a councillor by an applicant, developer, objector or other third party, is considered an important part of the political process. The Nolan Report recognised the two roles that councillors perform in the planning process, namely, the representation of public opinion and the determination of applications.
27. However, lobbying can, unless care and common sense are exercised by all parties, lead to the impartiality of a councillor being called into question. When being lobbied, all councillors should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the application before they have considered all representations and the planning content. Councillors should not lobby other councillors to

act for them, or act as an agent for other councillors, or put pressure on officers for a particular recommendation.

28. In such situations, they should restrict themselves to giving procedural advice including recommending that those who are doing the lobbying should write to the Planning Business Manager so that their views can be included in the officer's report to the Committee. A councillor should not give a firm indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair, prejudicial and may amount to maladministration.
29. When attending public meetings councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals or submitted planning applications.
30. Correspondence received by councillors should be passed to the Planning Business Manager without delay to ensure that all material considerations are available to those members or officers responsible for determining the application. A response by a councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.
31. Taking account of the need to take decisions impartially, councillors must weigh up all the material considerations reported at each committee meeting.
32. If planning applications are considered by a succession of committees or meetings, each consideration will require the councillor to weigh up, afresh, all the reported material factors before reaching a decision at that particular meeting.
33. Whilst councillors involved in making decisions on planning matters and applications will begin to form a view as more information and options become available, a decision can only be taken by the relevant Committee when all available information is to hand and has been considered.

PRE-APPLICATION DISCUSSIONS

34. Discussion between a potential applicant and representatives of the Authority prior to the submission of an application can be of considerable benefit to both parties. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process on the part of the applicant.
35. In order to avoid such problems, pre-application discussions should take place within clear guidelines.
 - It should always be made clear at the outset that the discussions will not bind the Authority;
 - Advice should be consistent and based upon the Development Plan and material considerations. All officers taking part in such discussions should make it clear whether or not they are the decision maker.
 - A written note should be made of the meeting. Councillors would be entitled to see this note. At least one officer should attend potentially contentious meetings and a follow-up letter would usually be sent;

- Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be partisan;
- To maintain impartiality and its appearance, it is preferable that councillors do not take part in such discussions. Should there, however, be occasions when councillors are involved they should always be advised by appropriate professional officers (which must always include a senior planning officer) and be authorised, on a case by case basis, by the Area Committee or the Strategic Development Control Committee;
- The involvement of councillors should be recorded in the committee report.

POST-APPLICATION DISCUSSIONS

36. A councillor should not approach an applicant for planning permission with a view to securing changes to an application or achieving planning gain. Such an approach would inevitably give rise to allegations of partiality or bias. Any contact with applicants should normally be conducted with and through officers and should always be reported to the Area Committee or the Strategic Development Control Committee.

SITE VISITS

37. The Code of Conduct applies whenever a Councillor is conducting official business including site visits.

A formal site visit will often be helpful if the impact of the proposed development is difficult to visualise from plans and supporting information including photographs, or if there is good reason why the comments of the applicant and objectors cannot be adequately expressed in writing. A site visit can cause delay and addition work. They should only be used when the expected benefit is substantial. This could apply when:

- the proposal represents a significant departure from the Development Plan;
- the proposal raises wider policy issues;
- there is considerable local concern about a proposal

38. Site visits are intended solely for the purpose of acquiring information about the nature of a planning application. They should not be used as an opportunity for applicants, agents or objectors to seek to influence the views of councillors.

39. During formal site visits, councillors, along with the accompanying officers, should carry out the inspection in one group. The Chair should ensure that applicants, agents or objectors do not impose themselves on the group or individual members of the group. Councillors should refrain from making comments on the merits or otherwise of the application to any interested party who may be present.

40. Similar principles should apply to informal site visits conducted by individual members or groups of members.

OFFICER REPORTS TO COMMITTEE

41. To avoid criticisms of inadequate consideration of issues, of inconsistency or of poor reasoning, regard needs to be had to the following points when preparing reports.

- Reports should be accurate and cover all relevant points including the main thrust of objections;
- Relevant points will include a clear exposition of the Development Plan, site or related history, and any other material considerations;
- Reports should have a written recommendation. Oral reporting should be extremely rare and carefully minuted;
- Reports should contain a technical appraisal which clearly justifies the recommendation;
- If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

42. If a committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the Committee's reasons should be made and a copy placed on the application file. 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. The officer should be given an opportunity to explain the implications of the contrary decision.

43. If on consideration of an Area Committee's decision to refuse an application, the Planning Business Manager considers that it may be difficult to sustain the Council's case on appeal, he or she will report back to the Area Committee on the open agenda, setting out the strengths and weaknesses in the Council's position. This procedure will also apply if an Area Committee makes a decision to grant permission which is contrary to Local Plan policy or proposes unworkable planning conditions.

44. If the Area Committee confirms its decision to refuse an application, it should also consider how best to represent the Council's case, including the funding of the appeal and the opportunity for councillors to give evidence.

45. If the report of the Planning Business Manager recommends approval of a departure from the Development Plan, the full justification for this recommended departure shall be included in the report.

REGULAR REVIEW OF DECISIONS

46. Arrangements will be made for councillors to visit a sample of implemented planning permissions annually, so that a regular review of the quality of planning decisions can be undertaken.

COMPLAINTS AND RECORD KEEPING

47. Whatever procedures a local authority operates, it is likely that complaints will be made. The Council has a complaints procedure.
48. So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. These principles apply equally to enforcement and development plan matters. Monitoring should be undertaken regularly.
49. The same principles of good record keeping will be observed in relation to all enforcement and Development Plan matters. Monitoring of record keeping will be undertaken regularly by the managers in the Planning Policy and Development Control Units.