

CODE OF CONDUCT ON PLANNING MATTERS FOR COUNCILLORS AND OFFICERS

1. INTRODUCTION

- 1.1 This Code of Conduct (“the Planning Code”) is in addition to the Members’ Code of Conduct adopted by the Council on 28 June 2007 (“the Code of Conduct”). The Planning Code is set out in the form of a series of headings with a brief outline of the issues involved, followed by best practice advice and guidance.
- 1.2 Unless otherwise stated or the context otherwise requires, references in the Planning Code to “the Council” are to Worcestershire County Council, to “the Committee” or “the Planning Committee” are to the Planning and Regulatory Committee or such other member body for the time being carrying out the functions presently assigned to the Planning and Regulatory Committee, and to “Councillors” are to Councillors who are members of the Planning Committee.

2. LOBBYING

- 2.1 Lobbying, or seeking to influence a decision, is a normal part of the political process. However, it can lead to impartiality being brought into question and the need to declare publicly that an approach of this nature has taken place. Problems could arise if Councillors indicate or give the impression of support or opposition to a development proposal or particular planning application, or declare their voting intention, before a decision is to be taken. To do so without all relevant information and views would be unfair, prejudicial and could lead to legal challenge. Lobbying may take place by professional agents as well as unrepresented applicants/landowners.
- 2.2 In general terms the following best practice points apply to each of those situations:
- Care should be taken by any member involved in the decision-making process in expressing an opinion on any planning proposal. Councillors should always indicate that they will keep an open mind until all the facts are known and they have heard all sides of the argument. Before this stage it is better to restrict themselves to listening to points of view and directing those who are lobbying to write to the Council so that their representations can be included in the Officer’s report.
 - Councillors who find themselves in a situation which is developing into lobbying should always explain that whilst they can listen to what is said they are required to keep an open mind and are constrained from expressing a firm point of view or an intention to vote one way or another, otherwise they will have to state their position at the Committee meeting and not take part in the subsequent discussion of or vote upon the proposal.
 - If Councillors choose to visit sites prior to consideration of a planning proposal by the Committee they must have regard to the principles outlined above and in order to ensure openness and fairness they should consider whether to visit a neighbouring objector’s property also. It is advisable not to accept invitations to view sites prior to a formal site inspection by the Committee, as this could be used by an agent or applicant as an opportunity to exert undue pressure.
 - Councillors should not negotiate detailed planning matters with lobbyists.

- It is perfectly acceptable for a Councillor representing the electoral division in which the application lies (the local Councillor), or a Councillor who in an official capacity has expert or detailed knowledge of a relevant matter, to address the Planning Committee but it is inappropriate for Councillors to organise support or opposition or to lobby other Councillors informally.
- Councillors should ensure that they are not perceived by the public as having prejudged a matter as a result of views expressed on behalf of a political party of which they are a member.
- Councillors should not act as advocate or agent for planning policy matters to be determined by the Council.
- Councillors should not put pressure on officers for a particular recommendation. The recommendation and the decision are separate parts of the same process which should be justified by the report and the debate respectively.

3. APPLICATION DISCUSSIONS

3.1 Local planning authorities are encouraged to enter into pre-application discussions with potential applicants by the Audit Commission, the Local Government Association and the National Planning Forum. In addition, negotiations and discussions are likely to be ongoing after an application has been submitted. Such discussions can often be interpreted by the public, and especially objectors to a planning proposal, as prejudicing the planning decision-making process. In order to avoid or at least allay such perceptions, application discussions should take place within clear parameters as follows:-

- Pre-application discussions should be conducted at officer level; where confidentiality is requested this will be respected at this stage.
- It should always be made clear at the outset that any discussions are on a without prejudice basis and that where Councillors are involved any views expressed by them are personal and provisional.
- It should always be stated that advice given by planning officers is subject to review at a more senior level and in the light of any additional relevant information that might come forward.
- Advice given should be consistent and based upon the Development Plan, Government planning policy statements and any relevant material considerations.
- A written note should be made of any application discussions and placed upon the relevant file.
- Two or more officers shall attend potentially contentious discussions. A follow-up letter should be sent, at least where documentary material has been left with the Council.
- Care must be taken to ensure advice is impartial and if requested it will be confirmed in writing.

4. DECLARATIONS OF INTEREST

4.1. The provisions of the Code of Conduct in respect of interests nationally apply to all Councillors, including Councillors on the Planning Committee, and must be observed. For the sake of clarity, Part 2 of the Code of Conduct is attached as an appendix.

4.2 Further guidance on declarations of interest may be obtained from the Council's Monitoring Officer.

4.3 Interests of Officers

- Care should always be taken to avoid any suspicion that an Officer recommendation may have been influenced by improper motives.

- Any Officer who has an interest in a planning proposal which, in the case of a Councillor, would fall to be declared under the Code of Conduct should immediately inform his or her Head of Service or Director who, in consultation as necessary with the Monitoring Officer, will determine whether the Officer should take any further role in relation to the matter.

5. DISTRICT AND PARISH COUNCIL MEMBERSHIP

5.1 Some Councillors will be members of parish/ town or district councils who are consulted on planning applications. Whilst the comments of these councils should concentrate on local issues, Councillors who are also members of such Councils can come under pressure to indicate their support or objection for a particular proposal. It is quite conceivable that a Councillor in this position could end up voting in a different way when all the relevant information is made available in the Officer report to the Planning Committee. In these circumstances the following advice is given:

- Councillors who are also members of parish/town councils should continue to listen and give assistance if necessary when planning applications are being considered by those councils but should avoid giving a clear indication of support or objection. Councillors who are also members of district councils should follow a similar procedure but may also seek advice from district council officers.
- If wished Councillors can assure the parish or town council that they will ensure that the Council's planning officers and relevant Planning Committee members are aware of the council's views and reasons for them.
- Councillors should clearly explain to parish or town councils that they have not decided upon their final voting intentions until all the relevant information is presented to them.

6. COMMITTEE PROCEDURES AND CONDUCT OF MEETINGS

6.1 The procedures governing the conduct of meetings of the Council's member bodies are already set out in the Council's Constitution. However, the general public who attend these meetings will usually not be familiar with these procedures and it is therefore important that the impression given is always one of an orderly meeting, where it is clear that decisions are being made on matters which are relevant and that Councillors and Officers fully understand the reasoning. The following best practice guidelines will assist in this aim.

- Chairman's Briefings should whenever possible be held after the agenda has been set and Officer's recommendations made; the Chairman of the Committee will consider in consultation with the Vice-Chairman and the Council's Planning and Legal and Democratic Services Officers the relevant people to make presentations and whether a site inspection should be held before the matter comes to Committee.
- A contact officer will be named in each report to the Committee and Councillors may speak to the officer named about the report prior to the meeting at which the application referred to is to be considered.
- A legal officer shall be present at Planning Committee meetings where appropriate.
- Structured reports to Committee for planning applications shall set out all relevant issues, including in particular development plan policies, site or related history, and other material considerations. Reports shall contain a clear recommendation with an explanation of the reasons for it.
- Councillors may view letters of representation prior to the meeting of the Committee.
- Verbal updating of the report should be carefully minuted particularly when this leads to a change in recommendation.
- Relevant Development Plan policies and material considerations which explain the recommendations must be clearly set out in the report.

- Where decisions are to be delegated to officers or officers in conjunction with specified Councillors, this should be clearly stated and the arrangements detailed in the minutes.
- Terms of reference of any Section 106 or other Agreements required to be entered into by applicants/landowners concerned must be explained in the report and recorded in the minutes.
- Councillors should vote on a proposal or application before the Committee only if they have been present for the whole of the presentation and discussion relating to the proposal or application.

7. DECISIONS CONTRARY TO OFFICER RECOMMENDATION

- 7.1 When decisions are made contrary to Officer recommendation the Committee shall make clear the reasons for making such a decision at the time. However, it is preferable in these circumstances for the Committee either to defer a formal decision to enable appropriate advice on the terms of those reasons to be sought from relevant Officers (or from an independent source if necessary) or to delegate the formulation of detailed reasons to the Director of Planning, Economy and Performance in consultation with the Chairman and Vice-Chairman of the Committee and the Head of Legal and Democratic Services as necessary. The reasons shall be minuted at the appropriate meeting of the Committee, thus ensuring that all decisions are supported by a written explanation.
- Where a Councillor is minded to move a recommendation which is contrary to the Officer recommendation, in the case of a refusal, clear planning reasons should be given and in the case of approval, an indication of the conditions that should be imposed. If this results in a decision contrary to the Officer recommendation then the advice in the previous paragraph shall be followed.

8. SITE INSPECTIONS

- 8.1 Site inspections by the Committee can be helpful in reaching a decision, particularly in respect of large scale and complex planning applications. Inspections will always be held in relation to major new proposals for mineral workings or waste treatment/disposal and in other cases where the character or visual impact of the development cannot be readily appreciated from an inspection of the submitted plans and illustrative photographs and an appreciation of the wider setting, surroundings and/or access to the site is essential.

Apart from these arrangements in respect of 'live' applications, visits will take place annually to a selection of application sites approved by the Committee where development has been completed. These annual visits will enable the Committee to assess the actual impact of their decisions and to inform their future considerations.

The Chairman and Vice-Chairman will determine at the pre-Committee briefing which sites to inspect from the applications due to be considered at the next meeting based on the above criteria. Members of the Committee and local Councillors concerned about particular applications within their Division should make known their requests for site visits to the Chairman and/or Vice Chairman as early as possible. They should not wait until the relevant Committee meeting itself as this may delay the determination of that application for at least one Committee cycle. Requests for visits should be based on one of the criteria set out above.

Any member of the Committee may exceptionally request a site inspection at the meeting but the reasons relating to the above criteria must be stated and will be

minuted. Such site inspections will only be agreed if a majority vote decides in favour.

Only members of the Committee and the Local Councillor(s) may take part together with supporting officers. Officers may wish to explain matters on route and Councillors are therefore encouraged to travel to sites on the coach provided, rather than independently. This will also enable the inspection timetable to be adhered to where more than one site is to be inspected.

The applicant will be invited to attend as a matter of courtesy, to answer any factual questions and to provide Councillors with health and safety guidance.

Representations will not be heard from objectors, applicants or members of the public who may be present and officers will advise all relevant parties of this. Should attempts be made to make representations, Councillors will be advised to move away and disregard anything they may have heard. (This is to ensure that any representations are properly made in advance in writing or verbally at Committee under the Scheme of Public Representations. In this way, they may be properly heard by all Councillors, including those not present at the site inspection, responded to and recorded). No hospitality will be accepted.

Conduct of Site Inspections

- The representative of the Director of Planning, Economy and Performance will open the visit and advise Councillors of purpose, conduct and material planning considerations.
- Inspections will be undertaken in a formal and professional manner. They are part of the formal development control process and take place in public view. Conduct on the site inspection may therefore affect the public perception of the County Council as a whole.
- Members of the Committee should stay together as a group **at all times**. This is to ensure the health and safety of everyone on the visit, and is particularly important with operational minerals and waste sites that may have intrinsic hazards.
- Officers will highlight issues relevant to the site inspection. All questions should be directed through the lead planning officer on the visit. The officer may then seek clarification if necessary from the representative of the applicant. It is important that all members of the Committee who attend the site inspection are present to hear the question and answer session to ensure that everyone receives the same information. Councillors should not seek clarification individually from representatives of the applicant. Councillors should refrain from holding informal sub-group discussions or answering questions on behalf of the officers.
- There will be no debate regarding the merits of the application and Councillors should refrain from making observations or statements during the site inspection.
- Local Councillors will be asked to highlight local issues relevant to the site inspection but not to make formal representations.
- Councillors should refrain from smoking or using mobile phones on site.
- The Chairman or Vice-Chairman will end the visit and all Councillors will leave the site at the same time.

9. DELEGATION TO OFFICERS

9.1 In recognition of the statutory time constraints in determining applications a protocol for delegation to Officers has been adopted. This covers approval of non-controversial proposals for County Council developments and other minor non-controversial proposals, including details required to be approved by conditions of existing consents.

10. CONDUCT OF OFFICERS

- 10.1 Officers are subject to the Officers' Code of Conduct (Appendix 11 to the Council's Constitution).
- 10.2 Officers who are Chartered Town Planners are in addition guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. This Code obliges RTPI members to give professional and independent recommendations.
- Planning Officers who work closely with Councillors have to ensure that their professional judgement is not compromised by the nature of their professional relationship with Councillors.

11. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS AND COUNCIL DEVELOPMENT

- 11.1 The advice in this Section applies both to planning applications and Development Plan policy matters.
- Serving Councillors and Officers should never act as agents for people pursuing a planning matter for which the Council is the local planning authority. Should they submit their own proposals to the Council they should take appropriate action pursuant to section 4 of the Planning Code/Part 2 of the Code of Conduct.
 - Such proposals and the fact that a declaration of interest has been made should be identified on the relevant planning files.
 - Development proposals by the Council are to be treated in the same way as those by private developers particularly in relation to Officers' advice.
 - Where a Council development is being considered Councillors who sit on both the Member Body promoting the development and the Planning Committee should declare such interest as the circumstances dictate in accordance with Section 4 of the Planning Code/Part 2 of the Code of Conduct when the matter is considered by the Committee.

12. DEALING WITH THE MEDIA

- 12.1 The Council has a Communications Unit which can provide assistance to both Officers and Councillors in their dealings with the Media. However, there may still be direct contact and pressure from the Media. Councillors and Officers, when commenting on planning matters, should:
- Have regard to the points outlined in the Section on Lobbying and this Planning Code in general.
 - Make clear that they will retain an open mind until such time as all available data is available and this is discussed by the Committee.
 - Make clear that any views expressed are personal and not offered on behalf of the Council, unless they are made as the authorised spokesperson on a particular matter.

13. REVIEW AND MONITORING

- 13.1 The effectiveness of this Code will be monitored in the following ways:
- Any outcome of the consideration of complaints made under the Council's corporate representations procedure, or by the Ombudsman where he has decided to investigate, will be reported as appropriate to the Committee.
 - There will be regular monitoring of planning files by the proper officer to ensure complete and accurate record keeping.

NOTE: Further advice to Members from the Head of Legal & Democratic Services on dealing with planning proposals and applications is included separately.

**EXTRACT FROM WORCESTERSHIRE COUNTY COUNCIL
CODE OF CONDUCT****Interests****Personal interests**

8. (1) You have a personal interest in any business of the County Council where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the County Council;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in the County Council's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between the County Council and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in the County Council's area in which you have a beneficial interest;

(x) any land where the landlord is the County Council and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the County Council's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of the County Council and you attend a meeting of the County Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of the County Council which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the County Council of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in the County Council's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of the County Council and you have made an executive decision in

relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000].

Prejudicial interest generally

10. —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of the County Council you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the County Council where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of the County Council in respect of—

(i) housing, where you are a tenant of the County Council provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.