

**Part 5**  
**Members' Planning Code**  
**of Good Practice**

# **WEST DEVON BOROUGH COUNCIL**

## **Members' Planning Code of Good Practice**

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# COUNCIL

## Members' Planning Code of Protocol

### Background

This Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of an ethical framework and in consultation with the District Audit Service, Local Government Ombudsman and the Audit Commission.

The 2013 update takes into account the update to the Seven Principles of Public Life and changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011.

### Introduction

**The aim of this Code is to promote good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

**One of the key purposes of Planning:** to regulate the development and use of land in the public interest.

**Your role as a Member of the Local Planning Authority:** to make planning decisions openly, impartially, with a sound judgement and for justifiable reasons. You are also a democratically accountable decision taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.

**When the Code of Good Practice applies:** this Code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.**

### 1. Relationship to the Members' Code of Conduct

- 1.1 **Do** apply the rules in the adopted Members' Code of Conduct first, which must always be complied with. This is both the rules on interest, Disclosable Pecuniary Interests (DPIs) and any other interests identified by the Authority, and the general rules giving effect to the seven principles of public life; selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

1.2 **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:

- ❑ the Council at risk of proceedings on the legality or maladministration of the related decision; and
- ❑ yourself at risk of either being named in a report made to the Overview and Scrutiny (via the Code of Conduct (Hearing) Panel) or Council, or if the failure is also likely to be a breach of the interest provisions of Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

## **2. Development Proposals and Interests under the Members' Code**

2.1 **Do** disclose the existence and nature of your interest as required by the Authority's Code of Conduct, at any relevant meeting, including informal meetings or discussions with officers and other Members. Do disclose your interest at the beginning of the meeting.

2.2 Do take into account when approaching a decision that the Principle of Integrity is defined in terms that:

2.3 Holders of public office must avoid placing themselves under any obligations to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships.**

It is therefore advisable that you:

- ❑ **Do not** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think that you are receiving preferential treatment, because of your position as an elected Member. This would include, where you have a personal and DPI in a proposal, using your position to discuss that proposal with officers or fellow Members when other members of the public would not have the same opportunity to do so.
- ❑ **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and DPI to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public.
- ❑ (For example, where you have a personal and DPI in a proposal to be put before a meeting, you will have to withdraw from the room or Chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of the Council's public participation scheme to address the meeting in either objection or support of the proposal and observe the meeting's consideration of it from the public gallery).

2.4 **Do** notify the Monitoring Officer in writing where it is clear to you that you have a DPI or other personal conflict of interest and note that:

- ❑ You should send the notification no later than submission of that application where you can
- ❑ **On** your own applications note that:
  - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
  - you must not get involved in the processing of the application; and
  - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee.

### **3. Fettering Discretion in the Planning Process**

3.1 **Do not** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

3.2 Do be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

3.3 Do keep at the front of your mind that when you come to make the decision, you:

- ❑ Are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
- ❑ Must keep an open mind and hear all of the evidence before you, both the officers presentation of the facts and their advice as well as the arguments from all sides;
- ❑ Are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a members, in giving fair consideration to points raised;
- ❑ Are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- ❑ Are to come to a decision after giving what you feel is the right weight to those material considerations

3.2 **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning

determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits)

3.3 **Do** also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a DPI in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:

- ❑ you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:
  - another local or public authority of which you are a member, or
  - a body to which you have been appointed or nominated by the Council as its representative; or
- ❑ you are a trustee or company director of the body submitting the proposal and were appointed by the Council;
- ❑ you should always disclose a disclosable pecuniary as well as a personal interest and withdraw.

3.4 **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the town or parish council, for example, or both a district/borough and county councillor) provided:

- ❑ the proposal does not substantially affect the well being or financial standing of the consultee body;
- ❑ you make it clear to the consultee body that:
  - your views are expressed on the limited information before you only;
  - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
  - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
- ❑ you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.

3.5 **Do not** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances or abstain from voting

- 3.6 **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- 3.7 **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (*where this has granted by the authority's standing orders or by the consent of the Chairman and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and disclosable pecuniary interest. Where you do:
- ❑ advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
  - ❑ remove yourself from the Member seating area for the duration of that item; and ensure that your actions are recorded in the published minutes of that meeting; and
  - ❑ ensure that your actions are recorded

#### **4. Contact with Applicants, Developers and Objectors**

- 4.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.
- 4.2 **Do not** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the **Development Management Community Of Practice** to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- 4.3 **Do** otherwise:
- ❑ follow the rules on lobbying;
  - ❑ consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - ❑ report to the COP Lead **Development Management** any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

#### **In addition in respect of presentations by applicants/developers:**

- 4.4 **Do not** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- 4.5 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 4.6 **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.

- 4.7 **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

## 5. Lobbying of Councillors

- 5.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- 5.2 **Do** remember that your overriding duty is to the whole community not just to the people in your ward/local area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 5.3 **Do not** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 (or such other sum as may from time to time be substituted in the Code of Conduct).
- 5.4 **Do** copy or pass on any lobbying correspondence you receive to the COP Lead **Development Management** at the earliest opportunity.
- 5.5 **Do** promptly refer to the COP Lead **Development Management** any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 5.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 5.7 **Do** note that, unless you have a personal and DPI, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
- ❑ listening or receiving viewpoints from residents or other interested parties;
  - ❑ making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  - ❑ seeking information through appropriate channels; or
  - ❑ being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 6. Lobbying by Councillors

- 6.1 **Do not** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and disclosable pecuniary interest and have to withdraw.



- 6.2 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 6.3 **Do not** lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- 6.4 **Do not** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

## 7. **Site Visits**

Do try to attend site visits organised by the Council where possible

- 7.1 **Do not** request a site visit unless you feel it is strictly necessary because:
- ❑ particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - ❑ there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 7.2 **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- 7.3 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site
- 7.4 **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 7.5 **Do not** hear representations from any other party, with the exception of the Ward/Local Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- 7.6 **Do not** express opinions or views to anyone.
- 7.7 **Do not** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
- ❑ you feel it is essential for you to visit the site other than through attending the official site visit,
  - ❑ you have first spoken to the COP Lead **Development Management** about your intention to do so and why (which will be recorded on the file) and
  - ❑ you can ensure you will comply with these good practice rules on site visits.

## **8. Public Speaking at Meetings**

- 8.1 **Do not** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 8.2 **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## **9. Officers**

- 9.1 **Do not** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the COP LEAD **Development Management**, which may be incorporated into any committee report).
- 9.2 **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a COP Lead or those officers who are authorised to deal with the proposal at a Member level.
- 9.3 **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## **10. Decision Making**

- 10.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded, and repeated in the report to Committee.
- 10.2 In the event of a Member referring an application to Committee, there will be an expectation for that Member (unless in exceptional circumstances) to attend the relevant Committee meeting and explain the planning reasons behind their referral. This requirement applies to all Members irrespective of whether or not they are Members of the Committee.
- 10.3 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 10.4 **Do** comply with Section 38(6) of the Planning & Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 10.5 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer.
- 10.6 **Do not** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 10.7 **Do** have recorded the reasons for Committee's decision to defer any proposal.

- 10.8 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## **11. Training**

- 11.1 **Do not** participate in decision making at meetings dealing with planning matters if you have not attended any mandatory planning training sessions prescribed by the Council.
- 11.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 11.3 **Do** participate in periodic reviews of samples of planning decisions to ensure that Members' judgements have been based on proper planning considerations.