

WEST DEVON BOROUGH COUNCIL

Members' Code of Good Practice - Planning

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Members' Planning Code of Good Practice

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, and to set out the standards of conduct required of **all** Members in dealing with planning matters including applications, policy development and enforcement.

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 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 **You should** apply the rules in the adopted Members' Code of Conduct first, which must always be complied with.
- 1.2 **You should** 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. If you do not abide by this Code of Good Practice, you may put:
 - the Council at risk of legal challenge ; and
 - yourself at risk of either being named in a Code of Conduct Complaint and report made to the Standards Committee 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 **You should** disclose the existence and nature of your interest as required by the Authority's Code of Conduct, at any relevant meeting, including in informal meetings or discussions with officers and other Members, so that everyone taking part in the meeting, whether it is formal or informal, is aware of your interest. Disclose your interest at the beginning of the meeting.
- 2.2 **You should 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 or Disclosable Pecuniary Interest (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).
- 2.3 **You should** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal or DP Interest 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 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 **You should** notify the Monitoring Officer in writing where it is clear to you that you have a DPI or personal conflict of interest, by application or objection, or for any other reason, and note that:
- You should send the notification no later than submission of that application where you can
 - **On** your own applications note that:
 - Any proposal made by or on behalf of any Member of Council 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 Fettering your discretion is a specific term that means you are not approaching the decision with an open mind. You should participate in planning decision making at this Council with an open mind, and should not appear to have already 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 You should 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 You should keep at the front of your mind that when you come to make the decision, you:
- ❑ Have a duty, under planning legislation, to apply the policies of the Development Plan unless material considerations indicate otherwise;
 - ❑ 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; and
 - ❑ Are to come to a decision after giving what you feel is the right weight to the Development Plan and relevant material considerations
- 3.4 **You should** 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 or major advocate for the proposal. (NB: This is more than a matter of membership of both the proposing committee and the Development Management and Licensing committee, 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)
- 3.5 **You** will be able to take part in the debate at a meeting of the Council 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) 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 only on the limited information before you at that time;
 - you can 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 a 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 meeting; and
 - ❑ you disclose the personal interest regarding your membership or role when the meeting comes to consider the proposal.
- 3.6 **You should not** speak and vote on a proposal where you do not have an open mind. You do not also have to withdraw, but you may prefer to do so for the sake of appearances or abstain from voting

3.7 **You should** 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.

3.8 **You should** 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 have a disclosable pecuniary interest:

- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item; and
- remove yourself from the room for the duration of that item; and ensure that your actions are recorded in the published minutes of that meeting.

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

4.1 **You should** refer those who approach you for planning, procedural or technical advice to officers.

4.2 **You should not** agree to any formal meeting with applicants, developers or groups of objectors without first discussing with the planning case officer and agreeing a course of action in writing.

Where you feel that a formal meeting would be useful in clarifying the issues, unless agreed otherwise with the officer, you should not seek to arrange that meeting yourself but should request the **Planning Case Officer** 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 **You should** otherwise:

- follow the rules on lobbying (section 5);
- always make notes when contacted; and
- report in writing to the **Head of Development Management Practice** 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 You are able to attend a planning presentation at a town or parish council meeting, or a public meeting. When attending public meetings, including town and parish council meetings, Councillors should take great care to maintain their impartial role as a Councillor, listen to all the points of view expressed by the speaker and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.

- 4.5 **You should** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 4.6 **You should** 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.
- 4.7 **You should** be aware that a presentation is a form of lobbying and you must not express any strong view or indicate how you or other Members might vote.

5. Lobbying of Councillors

- 5.1 **You should** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, to express an intention to vote one way or another, or such a firm point of view that it amounts to the same thing, prejudices your impartiality and therefore your ability to participate in the Committee's decision making.
- 5.2 **You should** 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 **You should not** accept gifts or hospitality from any person involved in or affected by a planning proposal.
- 5.4 **You should** copy or pass on any lobbying correspondence you receive to the **Planning Case Officer** at the earliest opportunity
- 5.5 **You should** 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.
- 5.6 **You should** note that, unless you have a DPI, you will not have 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 **You should 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 **You can** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, 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 **You should 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 **You should 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

- 7.1 Do try to attend site visits organised by the Council where possible. The Site Inspection Protocol is attached at Appendix A.
- 7.2 **You should not** enter a site which is subject to a proposal other than as part of an official site visit (either a Borough council site visit or a town/parish council 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 **Head of Development Management Practice** 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.
- 7.3 **You should 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.

8. Public Speaking at Meetings

- 8.1 **You should not** allow members of the public to communicate with Committee Members 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 **You should** ensure that you comply with the Council's procedures in respect of public speaking at the Development Management and Licensing Committee.

9. Officers

- 9.1 **You should not** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the **Head of Development Management Practice**, which may be incorporated into any committee report).
- 9.2 **You should** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the **Head of Development Management Practice** or those officers who are authorised to deal with the proposal at a Member level, ie. the appropriate **Planning Case Officer**.
- 9.3 **You should** 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 **You should** 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 **material planning reasons** behind their referral. This requirement applies to all Members irrespective of whether or not they are Members of the Committee.
- 10.3 **You should** come to meetings with an open mind and demonstrate that you are open-minded.
- 10.4 **You should** 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 **You should** 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 **You should 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 **You should** 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 **material planning reasons** leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that the Council may have to justify the resulting decision in the event of any challenge.
- 10.8 When taking part as a substitute at the DM&L Committee, you are entitled to come to your own view on an application, and are not bound to reflect the views of the Committee Member that you are replacing.

11. Training

- 11.1 **You will not be able to** participate in decision making at meetings dealing with planning matters if you have not attended all mandatory planning training sessions prescribed by the Council.
- 11.2 **You should** 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 **You should** participate in annual refresher training and periodic reviews of samples of planning decisions and appeals to ensure that judgements have been based on proper planning considerations and sound decision making.

APPENDIX A

SITE INSPECTION PROTOCOL

DECEMBER 2016

Purpose:

The purpose of site visits is to enable Members to view particular aspects of an application in context. No decision is reached on site and there is no debate as to outcome at the site meeting.

Attendees:

In addition to the Council's officers and advisors (eg. County Highways), those who are entitled to attend and take part and who make up the Site Inspection Panel are:

- a. All Development Management and Licensing Committee Members, and
- b. The WDBC Member(s) representing the Ward in which the site is located

The applicant/agent may attend the site meeting but not participate, however, they will be expected to 'peg out' the proposed development.

Representatives of the respective Parish/Town Council may attend the site meeting but not participate.

At the discretion of the Chairman, the applicant or agent, and one representative from the Parish/Town Council, may be allowed to answer questions of clarity. Specific requests to view the proposal from a particular place (e.g. objector's home) may be accommodated at the Chairman's discretion.

Procedure on Site:

1. The site inspection will be chaired by the Chairman (or in his absence, the Vice Chairman) who will formally open the site inspection with introductions and then invite the Planning Officer to describe the application
2. The Planning Officer then describes the proposal and relevant site specific considerations, and guides the Members to appropriate vantage points which may be within and/or outside the site
3. The Chairman will invite questions from Members to seek clarification but not opinion from the Planning Officer and advisors. At the Chairman's discretion, and in exceptional circumstances, questions may be asked of the applicant/agent or one of the representatives of the Parish/Town Council

4. Any questions that the Case Officer is unable to answer will be listed and a full response given by the Case Officer at the Committee meeting the following week
5. Chairman formally closes the meeting

To request a site inspection:

The Scheme of Delegation sets out the circumstances when a Member can call an application to Committee. At that point, if the Member feels a site inspection should take place, the request should be made in writing to Head of Development Management Practice giving material planning reasons

At the DM&L Briefing meeting held the week prior to the publication of the agenda, which is attended by the Chairman, Vice Chairman, Head of Development Management Practice and Specialist Democratic Services, the Chairman and Vice Chairman will discuss with the Head of Development Management Practice which applications should be referred for site inspection

The site inspection itinerary will be prepared by the Specialist Democratic Services and circulated one week prior to the site inspections taking place. The itinerary will be included as part of the agenda

The site inspection will take place on the Thursday prior to the Committee date, and will receive their agenda papers prior to the site inspection taking place