

Appendix three

Councillors' planning code of practice

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INTRODUCTION

1. This code:
 - (a) was originally prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning and has been updated to reflect changes in law and practice since that was issued;
 - (b) is based on a model code which was prepared by the Lawyers in Local Government; and
 - (c) applies to:
 - (i) all councillors 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); and
 - (ii) both planning applications and to enforcement matters.

Relationship to the councillors' code of conduct

2. **DO** apply the rules in the councillors' 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 council, and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
3. **Do** then apply the rules in this councillors' planning code, which seek to explain and supplement the councillors' code of conduct and the law on decision making for the purposes of planning control. If you do not abide by this councillors' planning code, you may put:
 - the council at risk of proceedings on the legality of the related decision or maladministration; and
 - yourself at risk of being named in a report made to the 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.

If you have any questions you should seek advice from the monitoring officer or their staff preferably well before any meeting takes place.

THE PLANNING SYSTEM – THE COMMITTEE MEMBERS' ROLE

4. The key purpose of the planning system is to manage development in the public interest. The members' role is to make planning decisions:
 - openly and transparently;
 - impartially; and

- for justifiable planning reasons.

You are also a democratically accountable decision-taker who has 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 taken into account all material considerations and have given fair consideration to relevant points raised.

5. 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.

Key points (golden rules)

6. Planning decisions involve a balance between private and public interests where opposing views are often strongly held.
7. Your overriding duty is to the whole community not just to the people in your ward.
8. Decisions must not only be impartial they must be seen to be impartial by any reasonable observer. You should not favour, or appear to favour, any person, company, group or locality. You should not give the appearance of pre-judging (“pre-determining”) the matter before it is considered by the committee.
9. Planning decisions must be made in accordance with the statutory development plan unless material planning considerations indicate otherwise.
10. The advice of officers involved in the determination of planning matters will be presented on the basis of their overriding obligation of professional independence.
11. You may think that material planning considerations outweigh the development plan, or take a different view of the planning balance than is contained in the officer recommendations. You are fully entitled to do so but you will need to make sure that you can clearly identify and support the planning reasons leading to this conclusion/decision. Advice should still be sought from planning officers in relation to setting out the rationale for your decision.

MORE DETAILED GUIDANCE – DO’S AND DON’TS

DISCLOSABLE PECUNIARY INTERESTS

12. **DO**, as soon as you become aware that you have a **disclosable pecuniary interest** in any matter to be discussed at a meeting, make a verbal disclosure of that interest.
13. **DO** leave the meeting before that matter is discussed or, if you realise after the discussion has begun, as soon as you have made your disclosure.
14. **DON'T** participate in the discussion or vote on a matter in which you have a **disclosable pecuniary interest** unless you have been granted a dispensation.
15. **DO** notify the monitoring officer of your **disclosable pecuniary interest** in writing within 28 days of your disclosure unless it is already included on your register of interests form published on the council's web site.
16. **DO** seek advice from the monitoring officer if you are in any doubt about what to do.
17. Do take into account when approaching a decision that the Principle of Integrity is defined in terms that:

"Holders of public office must avoid placing themselves under any obligation 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".

BIAS AND PREDETERMINATION

WHERE YOU HAVE A DISCLOSABLE PECUNIARY INTEREST

18. **DON'T** get involved in the processing of the application.
19. **DON'T** attend any formal or informal meeting about the application or seek to speak at meetings.
20. **DON'T** try to represent local ward views: get another ward/local councillor to do so instead.
21. **DON'T** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
22. **DON'T** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor. This would include, where you have a **disclosable pecuniary interest** in a proposal, using your position to discuss that proposal with officers or councillors when

other members of the public would not have the same opportunity to do so.

23. **DO** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a **disclosable pecuniary interest** to an appropriate officer (in person or in writing), the code places greater expectations as to conduct than would be imposed on a normal member of the public.

YOUR OWN PROPOSALS

24. **DO** notify the monitoring officer, in writing, of your own proposals and those where you act as agent for a third party (this notification should be made as soon as possible and no later than the submission of the application) and ensure you have completed the application form correctly (this requires councillors to disclose their position). These proposals may be reported to the committee as main items and not dealt with by officers under delegated powers. 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.

WHERE YOU HAVE NO DISCLOSABLE PECUNIARY INTEREST

25. You may take part in the decision making process but need to take account of the following points:

EXERCISING YOUR JUDGEMENT

26. **DON'T** fetter your discretion and therefore your ability to participate impartially in planning decision making by making up your mind ("pre-determination"), or even appearing to make up your mind, on a planning matter in advance of the committee meeting and of your hearing the arguments on both sides. You may put the council at risk of legal proceedings.
27. **DO** follow any guidance issued by the monitoring officer on bias and predetermination.
28. **DO** consider whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased and NOT do you think you were biased (which would be subjective).
29. Planning decisions should only be taken with knowledge of all the relevant considerations, including responses to consultations where relevant. The officers' reports are intended to bring together all relevant considerations, and further matters may arise at the committee meeting. It is therefore not

possible to come to a firm decision in advance of the meeting. You may have a preliminary view as to how you will decide a particular matter (“pre-disposition”) but you must keep an open mind at the meeting.

WHERE YOU HAVE FETTERED YOUR DISCRETION

30. **Don't** speak and vote on the proposal at the meeting.
31. Although you are not required to withdraw from the meeting, you may prefer to do so to avoid any complaint that your presence influenced the decision.
32. You can still exercise your separate rights as local councillor where you have fettered your discretion. If you do exercise that right:
 - advise the monitoring officer or chairman that you wish to speak in this capacity before the meeting starts; and
 - remove yourself from the committee table for the duration of that item.

THE DISTRICT COUNCIL'S OWN PROPOSALS

33. **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 just 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). The best advice in these circumstances is not to take part in the decision or vote on the proposals.

PARTICIPATION IN DISCUSSIONS OF CONSULTEE BODIES

34. Councillors may have a dual role, as councillors of organisations that are consulted on planning proposals and as members of the Planning Committee. In those circumstances:-
35. You may take part in discussions of the consultee body on the proposal **IF** you make it clear to the consultee body that:
 - (a) your views are expressed on the limited information before you only, **AND**
 - (b) you must reserve judgement and the independence to make up your own mind on the proposal based on your overriding duty to the whole community and not just to the constituents of that body, **AND**

- (c) you will not commit yourself as to how you or others may vote when the proposal comes before the Planning Committee.

HOW TO DEAL WITH LOBBYING

36. **DO** remember that your overriding duty is to the whole community not just to the people in your ward. You need to make decisions impartially. Make sure that you do not favour, or appear to favour, any person, company, group or locality.
37. **DON'T** declare the way you intend to vote.
38. **DON'T** express any opinion on the merits prior to your formal consideration of the matter at a meeting(s) of the planning authority unless you make it very clear that you will only make up your mind at the meeting after hearing the officers' presentation and evidence and arguments on both sides.
39. **DO** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.
40. Unless you have a **disclosable pecuniary interest**, you may:
- (a) listen/receive viewpoints from residents or other interested parties;
 - (b) make comments to residents, interested parties, other councillors or appropriate officers, provided they do not consist of or amount to pre-determining the issue and you make clear you are keeping an open mind;
 - (c) seek information through appropriate channels; or
 - (d) be a vehicle for the expression of opinion or speak at the meeting as a local councillor, provided that, if you are a member of the committee, you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or local view, you will make up your own mind having heard all the facts and listened to the debate.

DEALING WITH PARTICULAR GROUPS

APPLICANTS/DEVELOPERS

41. **DO** refer applicants/developers who approach you for planning or procedural advice to officers wherever practicable.
42. **DON'T** agree to a meeting with applicants or developers where you can avoid it, except where this is part of a meeting organised by an officer and at which an officer is present. (Councillors do not normally take part in

officers' discussions with applicants before a decision is taken, unless there are clear guidelines published by the council to protect and assist councillors and officers. Where you do become involved, you should be advised by the appropriate officers and the discussions should be recorded as a written file note.)

43. **DO** ensure that you report to the development manager any significant contact with the applicant and other parties and explain the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.
44. **DO** make it clear that you will only be in a position to make a final decision on the application after having heard all the relevant evidence and arguments at committee.
45. **DO** consider whether it would be prudent to make notes of what is said if no officer is present.

LOBBY GROUPS

46. **DON'T** become a member of, lead or represent a lobby group seeking to promote or oppose planning proposals. If you do and you are a member of the committee, you will have fettered your discretion.
47. **DO** copy or pass on any lobbying correspondence you receive to the head of planning at the earliest opportunity.
48. **DON'T** excessively 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.

POLITICAL GROUPS

49. **DON'T** decide how to vote at any sort of political group meeting, or press any other councillor to do so, in advance of the meeting at which any planning decision is to be taken. Political group meetings must never dictate how councillors should vote on a planning issue.

PRESENTATIONS

50. **DON'T** attend private presentations or exhibitions unless they have been organised by officers or an agreement has been reached as to whether an officer is required to be present. This is particularly important if you may sit on the Planning Committee.
51. **DO** ask relevant questions for the purposes of clarifying your understanding of the proposals.

52. **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.
53. **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 councillors might vote.

UNDUE OR EXCESSIVE LOBBYING

54. **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). The monitoring officer will in turn advise the appropriate officers to follow the matter up.

GIFTS AND HOSPITALITY

55. Be careful about accepting gifts or hospitality wherever possible. If some hospitality is unavoidable, ensure that it is not excessive or inappropriate. Whilst not a **disclosable pecuniary interest**, a councillor, nevertheless, has the option of registering this so as to demonstrate openness and transparency to avoid any allegation of corruption or impropriety.

DEALINGS WITH OFFICERS

56. **DON'T** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views on the proposal, which may be incorporated into any committee report.)
57. **DO** recognise that officers are part of a management structure and only discuss a proposal, except in any formal meeting, with a head of service or those officers who are authorised by their head of service to deal with the proposal at a councillor level.
58. **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' advice, 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.

SITE VISITS

59. **DO** provide planning reasons to justify the need for a formal site visit.

60. **DON'T** request a site visit unless you feel it is strictly necessary.
61. **DO** vote for a site visit to take place only if you intend to attend.
62. **DO** try to attend site visits organised by the council where possible.
63. **DO** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.
64. **DON'T** express opinions or views to anyone.
65. **DO** ask questions or seek clarification of matters that are relevant to the site inspection.
66. **DON'T** hear representations from the applicant or third parties with the exception of ward councillors whose address must focus only on site matters.
67. **DON'T** visit a site on your own, even in response to an invitation, as this may give the impression of bias. There is nothing preventing you from viewing a particular site from the public highway but remember you do not have a right to enter private land. Exceptionally, where there is no organised site visit, and with the prior approval of the development manager, the local councillor or in appropriate circumstances other councillors, may ask for an individual site visit accompanied by an officer.

COMMUNICATION WITH THE PUBLIC AT COMMITTEE MEETINGS

68. **DON'T** allow members of the public (or fellow councillors if you are a town or parish councillor) to otherwise communicate with you (orally or in writing) during the committee's proceedings, as this may give the appearance of bias. This includes all forms of electronic communications.

MAKING DECISIONS

69. **DO** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the development plan unless material considerations indicate otherwise.
70. **DO** come to your decision only after due consideration of all of the information reasonably required to base a decision upon. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request it. If necessary, defer or refuse the application - whichever is appropriate.

71. **DON'T** 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.
72. **DO** ensure that, if you request a proposal to go before the committee rather than be determined through officer delegation, your planning reasons are recorded and repeated in the report to the committee.
73. **DO** have recorded the reasons for any committee decision to defer a proposal.
74. **DON'T** take part in the meeting's discussion or voting on a proposal if the application site is located in your ward (you may address the committee as ward councillor (unless you have a disclosable pecuniary interest in the matter)).

WHERE THE OFFICERS' RECOMMENDATION IS NOT ACCEPTED

75. Decisions on planning matters (unless delegated to officers) are ultimately for councillors to make. But decisions, whoever makes them, must be made in accordance with the development plan unless material considerations indicate otherwise.
76. If the officers' recommendation is not to be followed, equally robust planning reasons for the decision must be given at the meeting and minuted. Those reasons must be capable of being defended at any subsequent appeal.
77. Officer reports will include a recommendation based on an assessment of the proposal against the development plan and material considerations, including those arising from the representations made by the applicant and consultees. The reasons for the recommendation will be set out in the report. If councillors take a different view at the meeting, they will need to provide equally argued planning reasons. If on reading the officer report, you form an initial impression that leads you to be pre-disposed to go against the recommendation, it may help to discuss tentative reasons with officers before the meeting.
78. **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.

PROCEDURE IF OFFICERS' ADVICE IS NOT TO BE FOLLOWED:

79. Proposer and/or seconder to set out planning reasons for the proposal.

80. Officers to be given time to comment on those reasons and their ability to withstand challenge through the appeal procedures.
81. Chairman may adjourn briefly for proposer and seconder to discuss and formulate reasons with officers, reconvening for a vote and for reasons to be fully recorded. If chairman concludes that there are opposing views amongst committee members he may take a vote on the proposal without adjourning for discussion with officers. In such circumstances the planning reasons for the proposal should be set out in detail before the vote is taken.

TRAINING

82. **DON'T** participate in decision making at meetings dealing with planning decisions if you have not attended any mandatory planning training prescribed by the council.
83. **DO** try to attend any other specialised training sessions provided. 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.

SANCTIONS

SANCTIONS (INCLUDING OFFENCES)

84. If you do not follow this code, you may put:

- (a) the Council at risk of proceedings on legality or of maladministration;
- (b) yourself at risk of breaching the councillors' code of conduct.

85. It is a criminal offence (without reasonable excuse), if you are aware that you have a **disclosable pecuniary interest** in a matter being considered at a meeting:

- (a) not to disclose that interest (unless it is already registered)
- (b) to participate in any discussion or vote on that matter.

EXTERNAL SANCTIONS

86. These include:

Local Government Ombudsman

87. The Ombudsman can investigate the process by which a planning decision has been taken (though not the decision itself). If injustice caused by maladministration is found, the report may name the councillor involved and give particulars of the breach. The report may be made publicly available.

Appeals to the Secretary of State

88. If an appeal is lodged and the council is found to have been unreasonable (for example by making a decision for inadequate planning reasons) the appellant's costs may be awarded against the council.

Judicial Review

89. If the council can be shown to have not followed the correct procedures in determining an application or to have taken into account irrelevant considerations, the court may quash the decision. The claimant's costs would normally be awarded against the council.