

APPENDIX 3 TO SECTION 8

NORTH HERTFORDSHIRE DISTRICT COUNCIL'S MEMBER'S PLANNING CODE OF GOOD PRACTICE¹¹ [Adopted by the Council on 3 September 2015]

Introduction

The aim of this Planning Code of Good Practice (the 'Code'): to ensure that there are no grounds for suggesting that a decision is biased, partial or not well founded in the planning process.

One of the key purposes of the planning system is to regulate development and use of land for the public interest. If you are a Member of the Planning Control Committee ('the Committee') your role is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. If you are any other NHDC Member, your role is to ensure that a democratic, fair and transparent process is followed through your role as Ward advocate.

When the Code applies: this Code applies to all Members at all times when involving themselves in the planning process, whether you are a Member of the Committee or not (this includes pre-application discussions, briefings, when taking part in the decision making meetings of the Council or when involved on less formal occasions, such as meetings with Officers, the public, consultative meetings and acting as Ward advocate). This includes not only **planning applications/ proposals**, but also **planning enforcement** or **site specific policy issues**.

If you have any doubts about how this Code applies to you please seek advice from the Monitoring Officer or one of his/her staff, preferably well before any meeting takes place. As planning is an area of Council business that the public are interested in, remember to consider how your actions will be viewed by them.

1. Relationship to the Members' Code of Conduct ('Code of Conduct')

- **Do** apply the Code of Conduct first, as this must always be complied with. Frequently specific issues will arise on interests: Disclosable Pecuniary Interests ('DPIs') and any Declarable interests (identified at 4.6). However, other matters such as making sure you are not seen to misuse your position, or disclose sensitive confidential information – and abiding by the seven Principles of Public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership set out under 3.1, will also be relevant.
- **Do** then apply this Code, as it seeks to explain and supplement the Code of Conduct and in basic terms the law on the planning process. If you do not abide by this Code, you may put:
 - the Council at risk of appeals, or legal challenges on the legality of the decision or complaints of maladministration; and

¹¹ Based on the Lawyers in Local Government Model Council Members' Planning Code or Protocol 2014.

- 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 - a complaint may be made to the police to consider criminal proceedings and/ or the Standards Committee.

2. Development Proposals and Interests

The Principle of Integrity is key to decision making and is defined in these terms:

*“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**”.*

So:

- **Don’t** get involved at any stage of the determination of an application if you have an interest in it. **That includes involvement in pre-application discussions or negotiations with an Officer or Members.** If you have an interest you may nominate someone to make representations on your behalf. You may make representations in writing. Members with a DPI or Declarable Interest will not be notified of pre-application advice, if Officers are aware of the interest.
- **Don’t** seek or accept any preferential treatment, or place yourself in a position that could lead the public to conclude that you are receiving preferential treatment, because you are a Councillor.
- **Don’t** act as Ward advocate if you have a DPI or Declarable Interest.
- **Do** notify the Monitoring Officer in writing where it is clear you have a DPI or other Declarable Interest and the existence and nature to other relevant Officers.

Also note:

If this is your DPI:

- you should send the notification no later than submission of that application or as soon as you are aware that the application has been made (e.g. if this is you or your spouse’s employer you may only become aware at a later date);
- **if this is your application** this will always be referred to the Committee for decision and not dealt with by Officers under delegated powers;
- you must not get involved in the processing of the application; and

- you should use an agent to liaise and correspond on your behalf and deal with Officers, attend and speak on your behalf in the public speaking session at Committee.

If this is a Declarable Interest:

- Do not get involved in trying to refer the proposal to Committee.
- Ask another Councillor to deal with this with Officers or speaking at Committee as Ward advocate.
- **Exceptions are detailed below for Multi-hatted Members.**

3. Pre-determination, bias, reasonableness and fettering discretion in the Planning Process

You are a democratically accountable decision-taker who has been elected to provide and pursue policies. You are entitled to be predisposed towards an outcome *provided you have not pre-determined a proposal or be seen to have done so*. To ensure that is the case (i.e. that you have approached this in a reasonable and unfettered way) you must give due consideration to all representations, Development Plan documents and material planning considerations (which will be set out in any Planning Case Officer's report that comes before Committee). Members must have and **be seen to have** an open mind on a planning application.

So:

- Don't get involved in pre-application advice or negotiations other than providing general advice on the planning process/ or procedure¹². Planning Officers will deal with this, and applicants are made aware that this is not binding on the authority. Pre-application advice is available for all applications and encouraged for certain types of applications. Ward Councillors (and other Councillors as thought appropriate) will be informed if pre-application advice has been provided for Major¹³ applications. Active involvement of Committee Members in a proposal prior to determination is likely to lead to an appearance of bias and/or predetermination if the Committee becomes the decision making body
- **Don't** do or say anything to make it appear that you have reached a conclusion on any planning proposal prior to the formal decision being made i.e. don't "fetter your discretion" by approaching the decision with a closed mind.
- **Do** listen to the views of Officers, applicants and objectors and debate at the Committee meeting *i.e. keep an open mind in the light of all the evidence and arguments*. You should only take account of the Development Plan documents and material planning considerations and must disregard irrelevant issues and considerations.

¹² Amended under delegated authority of the Monitoring Officer section 14.6.19(c)(d) of the Constitution, following resolution of Standards Committee 12 October 2016.

¹³ As defined under Art. 2 The Town and Country Planning (Development Management Procedure) (England) Order 2015

- **Do** be aware that you will be perceived as biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being a chief advocate for the proposal.

Multi-hatted Members (i.e. where you are elected/ appointed to another local government body e.g. County or Parish/ Town Council): In all cases declare the nature of your Declarable Interest before the item is considered

Where the external body is only a consultee on the application:

- **Do** take part in the debate on a proposal when acting as part of a consultee body, provided:
 - you make it clear that your views are expressed on the limited information before you only;
 - you 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 then hear all of the relevant information; and
 - you do not commit yourself or others may vote when the proposal comes before the Committee.

You should then be in a position to attend, debate and vote on the item at the Committee. If the body is affected in other ways by the proposal you should consider seeking specific advice from the Monitoring Officer.

Where the external body is the decision maker (such as the Hertfordshire County Council) and this Council is a consultee and the public interest test is met:

- **Do** feel you can choose whether to involve yourself in the District consultation debate and vote, or observe. You can observe the District Committee discussions if you wish to participate in the County Council decision. If the external body has a Monitoring Officer and you are unsure whether to take part, seek his/her advice.

Where the external body is the applicant:

If you have been a chief advocate:

- **Don't** take part in the Committee debate or vote as the Public Interest test is likely to be met. You may exercise speaking rights, but should follow the process set out below* if you do. Seek advice if you are unsure.

If you have not been a key advocate or had a significant role in the proposal:

- **Do take part** if you have not committed yourself, as the Public interest test is unlikely to be met. This is going to be the case for most County Council consultee matters and *may*

be the case for Town and Parish related proposals. **Seek advice from the Monitoring Officer on the proposals.**

- **Do** take the opportunity to exercise your separate speaking rights as a Ward advocate where you need to represent the views of local electors (so long as you do not have a DPI or other Declarable Interest). *Where you intend to do this:
 - advise the Proper Officer or Chairman that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the Members area to the public area of the Committee for the duration of that item; and
 - ensure that your actions are recorded.

4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to Officers and/ or the Planning pages of the Council's website. As a Ward Councillor you will frequently be approached for advice on what to do, or where to obtain information and this is the best approach. If you sit on the Committee you should refrain from making comments on an application before it is determined in case you are accused of having made up your mind. Also section 5 "**Lobbying of Councillors**".
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors if you can avoid it. Where you feel that a formal meeting would be useful to clarify issues, you only arrange that meeting through the Development and Conservation Manager if she/ he is able to organise one. If the meeting can be arranged, 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.
- **Do** otherwise:
 - follow the Council's rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report any significant contact with the applicant and other parties to the Development and Conservation Manager, explaining the nature of the contact and your involvement in them (and this recorded on the planning file).

In addition in respect of presentations by Applicants/Developers:

- **Don't** attend a planning presentation without requesting an Officer to be present if you sit on the Committee. Ideally any presentation should be made to the Committee as a whole as part of the determination procedure. If you are on the Committee and attend a presentation outside of that process, take care – you will not have all the information and should reserve / and make clear you will reserve your opinion on the proposals until this is considered properly by the Council.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **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 at the Committee.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at the Committee.

5. Lobbying of Councillors

- **Do not commit yourself** to those lobbying you (generally or as part of the Statement of Community Involvement process) to vote a particular way at Committee, as you will be seen as it prejudicing your impartiality, and therefore your ability to participate in the Committee's determination. It is, however, possible to act as Ward advocate if you do not sit on the Committee and do not have an interest.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make impartial decisions that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** 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 minimal, its acceptance is declared as soon as possible, including adding it to your register of interests where relevant.
- **Do** pass on any lobbying correspondence you receive to the Development and Conservation Manager at the earliest opportunity.
- **Do** promptly refer any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise to the Development and Conservation Manager.
- **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).

6. Lobbying by Councillors

- **Don't** become a member of, lead or represent, an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter. If you do you will have to follow the DPI or Declarable Interest path (see Code of Conduct and above).
- **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 you should disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
- **Don't** excessively lobby fellow Councillors regarding your concerns or views nor attempt to persuade them how they should vote in advance of the meeting at which the planning decision will be taken.
- **Don't** decide or discuss how to vote on any application at any 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.
- **Don't** sit on the Committee if you are likely to regularly submit a number of planning applications. Councillors who are Members of Committee should never act as agents for individuals (including a company, group or body) pursuing a planning matter.

7. Site Visits/Inspections

A planning “**site visit**” is a recognised planning term within the planning system with a defined legal purpose. The purpose of a planning site visit is to observe the site and gain a better understanding of the issues. Visits made by Committee Members with Officer assistance are therefore the best approach. The Council does not regularly organise site visits and relies on report and presentations at Committee for consideration purposes. However, on larger or potentially contentious developments it may do so. ***This is not the same as a location or drive by visit by a Member.*** Once a Member becomes aware of a proposal they may be tempted to visit the site alone (i.e. a location or drive by visit). In such situations, the Member is only entitled to view the application site **from public vantage points**; they have no right to enter private property. While Members may be invited to enter the site by the owner, **it is not good practice to do so, as it can lead to the perception of bias.** Therefore if applicable Committee Members:

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** 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.

Requests can be made to the Development and Conservation Manager, or at Committee if the item is on the agenda and will be arranged if it is agreed that it is reasonable (in terms of timing and nature of the proposal).

- **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.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the Officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward 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, or attend the Committee and direct them to or inform the Officer present.
- **Don't** express a committed opinions or views about the proposal.
- **Don't** 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.

8. Public Speaking at Meetings

- **Don't** 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 or through the Chair, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

9. Officers

- **Don't** put pressure on Officers to put forward a particular recommendation. (*This does not prevent you from asking questions or submitting views to the Officer, which may be incorporated into any Committee report*).

- **Do** recognise that Officers are part of a management structure and only discuss a proposal outside of any arranged meeting, with a Head of Service or those Officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- **Do** recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Council's Employee Code 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

- **Do** ensure that if you request a proposal to go before the Committee rather than be determined through Officer delegation, that **you provide clear reasons** (as per the Committee's terms of reference under 8.4.5 (c) (ii) or (iii)) **AND you should attend and speak to the item at Committee if you have made a request for this to go before Committee to present reasons/ grounds to the Committee.**
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan¹⁴ unless material planning considerations indicate otherwise.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to Officer recommendation 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 at Appeal/ Inquiry or Judicial Review.
- **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 further information. If necessary this may lead to a proposal to defer (or, if sufficient reasons to do so, a refusal).
- **Do** make clear any reasons for deferral of any proposal, as these must be recorded.

¹⁴ The Development Plan is defined under section 38 of the Planning and Compulsory Purchase Act 2004 as any regional strategy, development plan documents (taken as a whole) which have been adopted or approved in relation the area and any adopted neighbourhood development plans.

- **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 Officer's introduction to the matter.

11. Planning Enforcement

It is not always a criminal offence to carry out development without planning permission. However, is likely to constitute a contravention of planning laws and the Council (as Local Planning Authority) can enforce those laws.

So:

- **Do** pass on reports from local residents of suspected planning breaches or those you believe have taken place, to the Development and Conservation Manager, as soon as possible, as **enforcement action is time critical**. These will then be investigated and Members updated when or where appropriate and enforcement matters reported regularly to the Committee.
- **Don't** discuss enforcement matters with third parties – you should stress that you cannot commit the Council to any particular course of enforcement action.

12. Training

- **Don't** participate in decision making at Committee unless you have attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, as 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 therefore assist you in carrying out your role properly and effectively. All Members are invited for annual refresher training and should endeavour to attend.
- **Do** participate in any annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

13. In summary:

- Apply Code of Conduct and then this Code.
- Declare interests and follow the participation procedures that apply to the interest you have.
- Don't involve yourself in pre-application advice or negotiations.
- Refer queries on applications and procedures to Officers.

- Ensure that if you request a proposal to go before the Committee that your reasons are clear (as per the Committee terms of reference). **You should attend the Committee and speak to the item if you do this.** Don't do this if you have an interest.
- Avoid meeting directly with developers/ attending presentations by them without Officers being present. Avoid lobbying other Members about a proposal.
- If you decide to undertake a location/ drive by of the proposal site, only view this from public vantage points. **This is not the same as a Planning Site Visit and Committee Members should attend if organised by the Council.**
- Don't put pressure of Planning Officers to change their recommendations before a Committee.
- Come to meetings with an open mind and demonstrate that you are open-minded.
- Come to your decision only after due consideration of all of relevant information. Making decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- Don't vote or take part in the discussion on a proposal at the meeting unless you have been present to hear the entire debate, including the Officers' introduction to the matter.
- If you are proposing, (seconding or supporting) a decision contrary to an Officer's recommendation or the Development Plan you must clearly identify the planning reasons for doing so. These reasons must be given prior to the vote and be recorded. You may have to justify the resulting decision by giving evidence in the event of any challenge.
- Report potential planning breaches to the Development and Conservation Manager.
- You must attend any mandatory training. Attend other specialist training if made available.
- **If you are unsure about any of the above, seek advice.**