

APPENDIX 3 TO SECTION 8 NB THIS CODE IS UNDER REVIEW

NORTH HERTFORDSHIRE DISTRICT COUNCIL'S PLANNING CODE OF GOOD PRACTICE

[Adopted by the Council on 6 September 2012]

[Updated by Portfolio Holder (title applicable at the time) for Legal Services under delegated powers on 9 August 2013]

When should I use this Code?

This Code applies to members

- involved in making decisions on planning applications,
- involved in drawing up documents for the local development framework
- representing constituents views to the Council

This Code applies at meetings of the Planning Control Committee, to consultative meetings with the public and to pre-application briefings and consultations.

What is it intended to cover?

Your role as a Member of the Planning Authority is to make decisions on planning policy and planning applications openly, impartially, with sound judgement and for justifiable reasons.

Your role as a Ward Member is to represent and respond to the views of your Ward residents.

This Code will guide you to take appropriate action when carrying out those roles. It ensures that you act ethically and with good governance.

What is it not intended to cover?

This Code cannot replace training on planning law. Training for members of the Planning Control Committee is mandatory. You should also attend any other specialist training provided.

No advice is given in this Code on planning issues (such as material considerations)

Introduction

This guidance offers practical advice on how members involved in planning issues can carry out their duties in a way which takes proper account of the special, quasi-judicial responsibilities which apply to planning issues. Because of the overriding obligation to make impartial decisions, it is inevitable that there are some constraints on what you can say or do.

The guidance is based on four principles:

1. *That land suitable for development is in short supply*
2. *That any development is likely to have a significant impact on the community in, or near, which it takes place.*
3. *That all planning decisions must be made fairly in the public interest. This means you should:*
 - *approach planning applications with an open mind and in accordance with the law.*
 - *ensure that information you have about an application is available to all parties involved.*
4. *That you can be held to account legally and politically for your decisions.*

Relationship with the Code of Conduct for Councillors ("Code of Conduct") adopted by the Council on 18th July 2013

You should consider the Code of Conduct first and then this guidance, which explains and supplements that Code.

Risk awareness

The guidance in this Code is intended to make you risk aware not risk averse. If you need to seek legal advice please do so. A Monitoring Officer and Deputy Monitoring Officer are available to advise on Code issues. A legal officer attends every Planning Control Committee to offer advice on planning issues and the Code. S/he is available prior to each meeting to discuss issues with you.

You are strongly advised to contact Legal Services in advance of the meeting to raise any issue you are aware of and to receive advice as to how to proceed.

There is a risk of proceedings on the legality or maladministration of any planning decision and of complaints being made against you personally for breaching the Code of Conduct. Following this Code will help to keep these risks to a minimum. Attending all prescribed training will also help to further reduce these risks.

SECTION 1: OBLIGATIONS

Whilst the whole of the Code of Conduct is relevant to your role as a member, there are two main legal issues that you must have a particular understanding of when dealing with planning matters

- i. Declaring interests
- ii. Pre-determination and bias

Declaring Interests

The interests below are outlined in the Code of Conduct. You have signed an 'Undertaking to Comply with the Code of Conduct'. The Code is available on NHDC's web-site in the 'Governance' section.

Government guidance may be issued from time to time to assist in the interpretation of the legal requirements. This will be brought to Members' attention by the Monitoring Officer and published on NHDC's web-site.

The Code of Conduct categorises 2 types of interests that are potentially disclosable by Members when they participate in any business of the Council in their official capacity ("disclosable interests").

If you act in a personal capacity, not as a Councillor, then the Code will not always apply to you. For example, if you wanted to make written representations about your neighbour's planning application you could do this without having to declare an interest provided your representations are only made in writing. If however you act in an official capacity or attend any meeting of the Council to put your views forward in person, or seek to misuse your position, the Code will again apply to you.

Disclosable Pecuniary Interests

These are prescribed by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. These are described at appendix A of the Code of Conduct. You will have identified any such interests pertaining to yourself or partner, in the NHDC Register of Members' Interests.

Where you have a Disclosable Pecuniary Interest in any item of business being considered by the Planning Control Committee, you must disclose the existence and nature of that interest to that meeting. This includes a Disclosable Pecuniary Interest that may not be on the Register of Members' Interests because it is awaiting registration.

Where you have disclosed the existence and nature of a Disclosable Pecuniary Interest in any item of business being considered by the committee, you **MUST** immediately withdraw from the room or chamber where the meeting is considering the item of business, unless you have received a dispensation from the Monitoring Officer. You may not make any representations to the meeting at any stage.

This applies to any member at the meeting regardless of whether they are a member of the Planning Control Committee or not.

Declarable Interests

These are described in full at paragraph 4.5 of the Code of Conduct and are summarised below. You should consider the full definitions in the Code of Conduct when deciding whether any apply to you.

You are regarded as having a Declarable Interest in any item of business being considered by the Planning Control Committee, where

(a) it might reasonably be regarded as affecting the financial position of yourself or a 'relevant person or body'; or

(b) it relates to or is likely to affect any of your DPis in respect of a member of your family (other than covered in the legislation) or your employer or a person or body with whom you have a close association; or

(c) a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest; or

(d) it relates to a person/body from whom you have received a Gift or Hospitality above the value set out in that policy in the previous 6 years;

(e) it relates to or is likely to affect: any body of which you are a member or in a position of general control and management which

(i) which you are appointed or nominated to by the authority

(ii) exercises functions of a public nature

(iii) is directed to charitable purposes

(iv) as its principle purposes includes the influence of public opinion or policy (including any political party or trade union)

If you attend a meeting at which any item of business is to be considered and you are aware that you have a Declarable Interest in that item, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

If you are present at a meeting of the council and you have a Declarable Interest relating to any business which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest you must

not participate in the discussion or vote on the item, although you may speak as a member of the public.

Pre-determination and bias

Section 25 of the Localism Act 2011 has sought to clarify the law regarding predetermination. Section 25 applies where a decision by members is challenged on the grounds of "bias, predetermination or otherwise".

Section 25(2) states:

"A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—

(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and

(b) the matter was relevant to the decision.

Whilst Section 25 provides some comfort to Members on the extent to which they are entitled to express firm views on matters before decisions are made, nevertheless it remains the case that based upon the rules of natural justice, Members must retain and be seen to retain an open mind and be prepared to listen to the views of officers and deliberations at the committee meeting. It is never fair to the applicant if you appear to have made up your mind on any application before you have heard all the representations. You must always keep an open mind.

Having an open mind means:

- you reserve your judgement and your independence to make up your 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 and,
- you hear all of the relevant information; and
- you do not commit yourself as to how you or others may vote .

It is perfectly acceptable to have a pre-disposition to a particular view, i.e. a tendency towards a particular opinion provided that you have not committed yourself unequivocally to that opinion prior to any formal consideration of the matter. Your own political views or the Council's Corporate Plan may encourage an opinion on a particular matter. This is perfectly acceptable and provided that you do not make unequivocal statements about how you will vote on an issue prior to hearing the matter it should not prevent you from deciding a planning issue.

Ask yourself before consideration of any matter whether you have an open mind.

Remember that it is not necessary to actually be biased towards a particular view, the appearance of being biased could lead to proceedings against the Council for an unlawful decision being made. As for the existence of any disclosable interests, you need to ask yourself what the public perception of your conduct would be, in reaching the decision to make such disclosures.

SECTION 2: GUIDELINES

This section contains guidelines on how the legal issues may arise whilst carrying out your role as a member.

Attending Planning Control Committee

Interests

These are described in some detail in Section 1.

Where you have disclosed the existence and nature of a "Disclosable Pecuniary Interest" in any item of business being considered by the committee, you **MUST** immediately withdraw from the room or chamber where the meeting is considering the item of business, unless you have received a dispensation from the Monitoring Officer. You are not permitted to make any representations to the meeting at any stage.

Where you have disclosed the existence of a "Declarable Interest" in any item of business being considered by the committee, you must disclose the existence and nature of that interest to that meeting.

You must consider if the interest that has been disclosed is one that ' a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest' ("the public interest test"). If it is, then you must withdraw from the room or chamber where the meeting is considering the item of business, unless you have received a dispensation from the Monitoring Officer. You may make representations to the meeting before withdrawing from it.

If you have considered whether the public interest test is met on an "Other Pecuniary Interest" or "Non Pecuniary Interest" and have reached the view that it has not been met, you must disclose the existence and nature of the interest and you may participate in the item of business.

Pre-determination

You need to come to a meeting with an open mind and demonstrate that you are open-minded. Making up your mind, or appearing to do so, for example by allying yourself to a lobby group or interest group on any planning matter before the Committee considers it and before you have heard the officer's presentation and all the evidence and arguments will mean you may be seen to have fettered your discretion.

Where the Council is the landowner, developer or applicant and you act as, or could be thought to be the chief advocate for the proposal, you are likely to be perceived as partial and unable to determine the application on its merits

You *can* 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 a town or parish Council, for example, or both a District and County Councillor), provided that you do not have a disclosable interest that would prevent you from taking part in the decision making process, you have an open mind and will reserve your judgement until you have heard all the relevant facts of the matter from all parties and you disclose your interest regarding membership of the consultee body when the matter comes before the Council.

If you could be seen to have committed yourself, you must decide whether you wish to address the Committee or not. If you want to represent the views of your ward you should advise the Proper Officer or Chairman that you wish to speak in this capacity before commencement of the item and remove yourself from the Members' seating area for the duration of that item. If you do not wish to speak, you may wish to explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or are reserving the right to judge) the matter elsewhere, so that this may be recorded in the minutes. You do not then have to withdraw (unless you have a disclosable interest as described above) but you may prefer to do so for the sake of appearances. You should sit in the public area if you do remain.

If you have not committed yourself there is nothing which prevents you speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or Ward view, you will make up your own mind having heard all the facts and listened to the debate.

Don't allow members of the public to communicate with you in any form during the Committee's proceedings, except via the public speaking procedure, as this may give the appearance of bias.

You should reach your decision at the Committee meeting on the application only after due consideration of all of the information presented to the Committee during consideration of the item at the meeting. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, ask for more. If necessary, ask the Committee to defer the application until you feel you know enough about it. In these circumstances, you should ask for the reasons for the Committee's decision to defer any proposal to be recorded.

You must not take part in the meeting's discussion on a proposal or vote unless you have been present to hear the entire debate, including the officer's introduction and any representations from the public.

"Dual Hatted" Members

Councillors sitting on the Planning Control Committee can also be elected members of the County Council ("dual hatted members").

The Planning Control Committee may consider an application where the County Council is the applicant or where the County Council (as the appropriate Planning Authority), is consulting with the District Council as a statutory consultee.

Dual hatted members will have to consider if they can participate in the decision making process for that item of business. In such cases, dual hatted members are likely to have a "Declarable Interest". This should be disclosed before the item of business is considered. Dual hatted members will also need to consider if that Declarable Interest is likely to meet the public interest test. If it is, then the dual hatted member must withdraw from the room or chamber where the meeting is considering the item of business, unless s/he has received a dispensation from the Monitoring Officer. S/he may make representations to the meeting before withdrawing from it.

The approach to take for dual hatted Members who sit on the North Herts District Council Planning Control Committee is considered for three specific scenarios set out below:-

If you have a position of general control or management at the County Council

It is considered that where a dual hatted member is in a position of general control or management at the County Council (e.g a Cabinet Member of the County Council, or a member leading on any aspects of planning scrutiny or planning policy formulation), s/he should **withdraw from the meeting** and not be a part of the decision making process unless a dispensation has been obtained from the Monitoring Officer.

If you sit on the County Council Development Control Committee

Dual hatted members who sit on the County Council's Development Control Committee or equivalent should ordinarily, as set out above, not take part in items where the District Council is a consultee in order to avoid the perception that they have predetermined how they will approach the matter when it is determined by the County Council. In such situations the dual hatted member should **withdraw to the public area** and take no part in the debate.

In respect of items where the County Council is the applicant the member is likely to be regarded as having a "Declarable Interest" but where the public interest test is unlikely to be met. In such situations, the dual hatted member may **remain in the meeting** and participate in the decision making process.

If you are a County Councillor with no relevant decision making position

Dual hatted members who do not hold positions of general control or management within the County Council and who do not sit on the County Council Development Control Committee are likely to be regarded as having a "Declarable Interest" but where the public interest test is unlikely to be met. In such situations, the dual hatted member may **remain in the meeting** and participate in the decision making process.

Members not sitting on the Planning Control Committee

If you have an interest as set out above, that would oblige you to withdraw from the meeting considering that item of business, you should not get involved in the processing of an application or consideration of a planning policy or planning policy proposal.

Be aware that the public could think you are receiving preferential treatment because of your position as a Member if you discuss such an application with officers, when other members of the public would not have the opportunity to do so.

You are not prevented from making an objection to a proposal or explaining and justifying a proposal in which you have an interest that would oblige you to withdraw from the meeting considering that item of business, to an appropriate officer in writing, in the way a private individual would.

Where you wish to make a planning application (such an application includes a Certificate of Existing Lawful Use or Development and proposed Lawful Use or Development), either for yourself or on behalf of someone else, remember to notify the Monitoring Officer in writing no later than submission of the application. In the interests of openness, these applications will

always be reported to the Committee as main items. They will not be dealt with by officers under delegated powers.

Pre- Application Stage

The Council encourages pre-application advice to applicants in the planning process. This is more likely to occur for larger and more complex applications. This advice is that of an Officer only and is not binding on the Planning Authority and is intended to assist the applicant ahead of the formal submission of their application. Active involvement by members at this stage could potentially lead to an appearance of bias and/or predetermination, when the matter comes for consideration before the Planning Control Committee, at a later stage.

In order to keep members informed as to when pre-application advice is provided to an applicant on major applications or applications with a wider public interest, the Planning department will inform the relevant Ward Councillors (and any other Councillor considered appropriate by the Strategic Director of Planning, Housing and Enterprise) when pre-application advice has been provided on:-

- Any residential development with a site area of 0.5 hectares or greater;
- Any development with greater than 500sq metres floorspace on a site of more than 1 hectare or other operational development with a site area of 1 hectare or greater
- Any other application considered by the Strategic Director of Planning, Housing and Enterprise to be controversial or of significant public interest or is likely to have a significant impact on the environment.

Members with a Disclosable Pecuniary Interest or Declarable Interest in the pre-application advice will not be informed.

Members should avoid giving separate advice on pre-application schemes and neither should they become drawn into any negotiations. Officers will deal with any necessary negotiations.

The adopted Statement of Community Involvement identifies the expectations that the Council has of applicants and agents for public consultation at the pre-application stage for major applications.

When briefing Members, Officers may forward a request from the applicant that the information is kept confidential, this may be for commercial or other sensitive reasons. Members should consider such a request to ensure that the process of pre-application advice is not adversely affected.

Members making a planning application for themselves or another should self evidently not be involved at any stage of determination of the application but could nominate a representative to be involved in the process.

Lobbying of and by Councillors

For the purposes of this Code, lobbying is defined as :

“Approaches or representations to a Member with the intention, or which may appear to have the intention, of influencing the way the Member deals with a planning matter”

You should explain to those lobbying or attempting to lobby you that, while you can listen to them, you cannot give them your view because it could mean you would be unable to take part in Committee discussion or vote, or the decision of the committee may be seen to be compromised.

You should copy and pass on any relevant lobbying material, such as correspondence or leaflets you receive to the Planning Control and Conservation Manager. This is to ensure that all Members sitting on the Committee are in possession of the same information on which to base their decision.

You should not attempt to persuade fellow Members how they should decide to vote in advance of the meeting at which any planning decision is to be taken.

Avoid accepting gifts or hospitality wherever possible. If a degree of hospitality is unavoidable, remember to keep a record of the details of any gift or hospitality offered or accepted. Remember this interest must be declared at a meeting, where relevant, for the next 6 years.

Remember to tell 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 advise the appropriate officers to follow the matter up.

You are free to join general interest groups which reflect your areas of interest and which concentrate on issues beyond specific planning proposals, such as the Victorian Society, CPRE, Ramblers' Association or a local civic society however you should disclose a non pecuniary interest where an organisation to which you belong has made representations on a particular proposal. If you have vocalised or helped formulate the groups views, you are likely to be considered biased and should withdraw from the matter for this reason.

If you become a member of an organisation whose primary purpose is to lobby to promote or oppose planning proposals, it is likely that you will have a disclosable "non pecuniary interest" that will meet the public interest test and will only be able to take limited role in expressing an opinion on the proposals

Visits to the Site of a Planning Application

A site visit involves entering the site which is the subject of an application. Merely passing by the site and having a casual look is not normally regarded as a visit.

You are likely to be asked to attend several small householder application sites by your constituents. When dealing with householder applications you may be invited to discuss the application with the applicant or neighbouring constituents. Provided that you do not commit yourself to any particular point of view, make clear to all present that you are keeping an open mind and advise that you have also to listen to the officer's views, keep notes of the meeting where possible and make clear that any discussions are not binding you can involve yourself in such visits with your constituents.

When dealing with developers you should always try to involve officers in the discussions. Ask the Planning Control and Conservation Manager to structure any discussions or site visits for major applications.

Failing that you should report any significant contact with a developer and explain the nature and purpose of the contacts and your involvement in them. A note of your report can be kept on the planning file.

Request a site visit only if you feel it is strictly necessary. Such reasons should include one or more of these grounds:

- particular site factors are significant in terms of the weight attached to them relative to other factors and the difficulty of assessing them in the absence of a site inspection; or
- there are significant policy or precedent implications and specific site factors need to be carefully addressed.

Officers

You should not seek to persuade officers to put forward a particular recommendation. This does not prevent you from asking questions or giving views to the Head of Development and Building Control or other managers. Answers to questions or your views may be reflected in any report to the Committee.

Please remember that officers involved in processing and determining planning matters have an overriding obligation of professional integrity and independence. Inevitably, that means their professional judgements may sometimes be at odds with the views, opinions or decision of the Committee or its Members.

Officer Reports

All applications and planning policy issues submitted to a Committee for decision will have a full written report from officers including the applicable policies of the Development Plan, a reasoned assessment of the proposal, relevant planning considerations and a justified recommendation.

Any oral presentation raising significant new matters and updates by officers to a Committee will be minuted.

In circumstances where there is a material change to a recommendation in the published report, this will be made available in written form as soon as practicable before the meeting.

All reports on planning applications will omit reference to financial implications as this is not normally a material planning consideration.

Where an application is recommended for approval a summary of reasons for approval will be given in the report. The Committee must indicate if it approves the application for the reasons stated or otherwise give the material planning grounds on which it adds to or removes any of the reasons. All reasons for approval will be minuted.

Where an application is refused in accordance with the officer's recommendation the reasons will be set out in the report along with any additional reasons expressed by the Committee. Any such additions must be clear, given at the time, and must be relevant in material planning terms.

Any application which is refused contrary to officer recommendations must be supported by clear and relevant reasons for refusal taking into account only relevant material planning considerations. All reasons for refusal of applications will be minuted in full. You may have to justify the reasons for refusal at an inquiry.

Planning Obligations

Where appropriate, officers will negotiate with developers about securing planning obligations through legal agreements.

Reports to Committees should include the 'Heads of Terms' for an Agreement and such other information as appropriate to enable the Committee to decide whether to grant permission subject to the satisfactory completion of such an Agreement, in order to ensure that all relevant matters have been considered.

Copies of any concluded legal agreements will be available for public inspection at the Council Offices in conjunction with the statutory planning register.

Planning Enforcement Matters

Planning enforcement is an important part of the planning process in protecting the environment. Whilst it is not always a criminal offence to carry out development without planning permission it may still constitute a contravention of planning laws and the Council (as Local Planning Authority) has the power to enforce those laws. Planning Enforcement primarily deals with harm caused by breaches of planning control.

Members may be contacted by local residents to report suspected planning breaches or may themselves identify suspected planning breaches within their wards. Members must contact the Planning and Conservation Manager as soon as possible to report the suspected breach as some enforcement action is time critical.

The Planning and Conservation Manager will keep Members updated, where appropriate, on enforcement action within their ward. Updates on enforcement matters are reported on a regular basis to the Planning Control Committee.

It is important that Members, when liaising with third parties on enforcement matters, do not appear to be speaking on behalf of the Planning Authority and as a matter of law cannot commit the Council to any particular course of action.

