

Comparison between NHDC Planning Code of Good Practice and the LLG Model Code

1. The Introduction

NHDC:

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.*

Model:

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

The variance in NHDC's code specifically draws a distinction between members of the Committee and those acting as ward advocates. The Model code makes reference to the "Planning Authority" before referencing "decision takers" and could therefore be argued to be less far reaching. This distinction continues in the next paragraph;

NHDC:

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**.

Model:

When the Code of Good Practice applies: this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the 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.

By adding in the word "all" and also setting it out clearly that it applies to all members, the NHDC code is far more comprehensive in its application, and explains this in an unambiguous way. Removal of this explanatory wording could leave room for argument as to whether the code applies to members who are not on the Planning Control Committee.

2. Development Proposals and Interests

Broadly, both codes contain the same information at point 2, although it is set out and expressed differently in the NHDC code. Although these changes give the impression that the codes are divergent in this section, in actual fact the differences are minor. The NHDC code also covers the situation around DPI's in greater detail.

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

This section in the NHDC code has been expanded when compared to the Model code. As well as being more specific around different situations i.e. the different roles external bodies can play in applications, as well including an earlier part of the Model code that had previously been omitted (the latter purple text contained in text box 1).

The NHDC code also includes the following section which is not included in the Model code;

Don't get involved in pre-application advice or negotiations other than providing general advice on the planning process/ or procedure. 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 Major 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.

The added detail included in point 3 of the NHDC code is effective and provides more certainty than would otherwise be the case.

4. Contact with Applicants, Developers and Objectors

These are almost identical in both the NHDC and Model code. The only real variance is as below;

NHDC:

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.*

Model:

Don't attend a planning presentation without requesting an officer to be present.

The added text to the above paragraph specifically restricts the information within it on to members who sit on the committee, where the model code could be read as applying to all members. Given that the NHDC code has been specific that the code applies to all members at all times, this specific restriction curtails the application to only committee members. If this was not the intention, then adoption of the more limited wording in the Model code would be advisable.

5. Lobbying of Councillors

The codes are almost identical at this point, the only differences being the first paragraph, and also the model code includes a further paragraph at the end of the section:

NHDC:

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.

Model:

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

Whilst the paragraphs broadly say the same thing, again the NHDC code makes the distinction between members of the committee and those who may act as ward advocates.

The additional bullet point in the Model code, which is absent from the NHDC code, states the following;

Model:

Do note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind);
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion of others in your role as a [Ward][Division] Member.

6. Lobbying by Councillors

This section is pretty much identical in each code, with the NHDC code having an additional bullet point;

NHDC:

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

The body of this section is pretty much identical in both codes, however the NHDC code starts off with an explanation of what a site visit is and gives some brief advice to councillors who might decide to visit a site on their own i.e. don't go onto private land etc. This introduction is helpful and clarifies what the section ahead is concerning.

The last bullet point in the NHDC code has omitted certain points that are in the Model code;

NHDC:

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.

Model:

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 *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 Development Control Manager 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.*

The changes in the NHDC code means that members cannot enter sites which are subject to a proposal in any way other than as part of a site visit, whereas the Model code allows for more flexibility in different circumstances.

8. Public Speaking at Meetings,

9. Officers,

10. Decision Making

Sections 8, 9 and 10 are identical in both codes.

11. Planning Enforcement

Section 11 is not present in the Model code (or rather, section 11 in the Model code; “training”, is contained at section 12 of the NHDC code)

This section in the NHDC code states as follows;

NHDC:

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

As mentioned above, this section on training is contained at 11 in the Model code; however this is the only difference, with the body being identical in both.

13. In summary

There is no summary in the Model code, however I think it is useful as a round up of what has gone before. The whole of the summary in the NHDC code is as follows;

NHDC:

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 on Planning Officers to change their recommendations before a Committee.*
- *Come to meetings with an open mind and demonstrate that you are open-minded.*