



**STOKE-ON-TRENT
CITY COUNCIL**

**LOCAL CODE
of
CONDUCT
for
DEALING WITH
PLANNING MATTERS**

1. **Introduction**

- 1.1 The role of an elected member in considering planning matters involves balanced judgement. Representing the needs and interests of individual constituents and the community must be weighed against the need to maintain an ethic of impartial decision making, often on highly controversial proposals.
- 1.2 The basis of the planning system is the consideration of development proposals against the wider public interest. Much can be at stake in this process and opposing views are often strongly held by those involved.
- 1.3 The public's views and their perception of probity within the planning system are of considerable significance in maintaining confidence in the operation of the planning process and, importantly, avoiding allegations of malpractice.
- 1.4 This Code of Conduct provides guidance on:
 - appropriate planning procedures and the expected standards of behaviour and involvement of Councillors in making planning decisions;
 - the registration and declaration of interests (particular aspects relevant to planning only - see also the general Members' Code of Conduct);
 - actions which could be seen to bring the authority into disrepute;
 - relations with other members, the public and staff;
 - the treatment of confidential material;
 - the conduct of meetings, particularly Committee site visits.
- 1.5 Members will be expected to comply with the spirit and not just the letter of the Code, which applies primarily to elected Members of the Development Control Committee. However, the Code also applies to all councillors who may be approached in relation to a planning matter, or who may wish to appear and speak at meetings of the Development Control Committee.
- 1.6 The Code supplements the following more general codes:-
 - Members' Code of Conduct (NB. This Planning Code does not form part of the statutory Members' Code of Conduct)
 - Code of Conduct: Roles and Responsibilities of all employees
 - The Royal Town Planning Institute's Code of Professional Conduct (for officers)

2. **Conduct of Councillors**

- 2.1 Whilst Councillors have a special duty to their Ward constituents, including those who may not have voted for them, their overriding duty is to the whole community. Councillors should not favour any individuals or groups and, although they may be influenced by the opinions of others, they alone have a responsibility to decide what view to take on any particular matter. Councillors must therefore represent their constituents as a body and vote in the interests of the whole City.
- 2.2 The basis of the planning system is the consideration of development proposals in the light of national and local policies, and the wider public interest. Much is often at stake in this process with opposing views often strongly held by those involved. Councillors should take account of those views but they should not seek to favour any person, company, group or locality or put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way or who may have interests which would prevent them from participating on a regular basis should consider whether they are best suited to serving on the Development Control Committee.
- 2.3 Decisions of the courts have also stressed that it is necessary to look beyond personal and prejudicial interests and to apply, in addition, the following test: in any particular case, from the point of view of the fair-minded and informed observer, is there a real possibility that the Committee or some of its members are biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant planning issues? If so, the relevant member/s should formally disclose this at the meeting and should not therefore speak or vote on the matter. They should also consider withdrawing from the room for the relevant item. In circumstances where a Member has declared a prejudicial interest in an item and must therefore withdraw from the room, it is not open to him/her nevertheless to stay in the room in a different capacity, e.g. as a member of the public.

3. **Development Proposals submitted by Councillors and Officers**

- 3.1 Proposals to the Council as Local Planning Authority by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is vital that they are handled in a way which gives no grounds for accusations of favouritism.
- 3.2 Serving Councillors who prepare plans or otherwise act as agents for people pursuing a planning matter should play no part in the decision-making process for the proposal. Similarly, if they submit a proposal themselves, they should take no part in the processing of *and decision-making on* that application.
- 3.3 Planning Officers concerned with development control are not permitted to prepare plans or otherwise act as an agent in the submission of a planning matter. Planning Officers will be allowed to submit an application on their own or a near relative's behalf after notifying, and at the discretion of, their Chief Officer. They must ensure they take no part in the consideration or decision making process or otherwise seek to influence the progress or outcome of their application. Guidance on such matters, covering all officers of the local authority, can be found in the Code of Conduct for employees.

4. Lobbying of and by Councillors

- 4.1 Lobbying is a perfectly proper part of the political process; those who may be affected by a planning decision will often seek to influence it through an approach to a Councillor, particularly one who is a member of the Development Control Committee. That is quite understandable and part of the political-representative process. However, such lobbying can call into question the impartiality and integrity of the Councillor. ***This would be equally true where the lobbying originated from within the organisation e.g. an approach made by a fellow Councillor or a member of the Executive. Any Member who is approached on a planning application should first speak to the relevant officer about the details of the application. All interested parties are entitled to view the planning files when they become public documents.*** Members of the Development Control Committee in particular, who are lobbied, must carefully consider their position in order to retain their impartiality at the point of decision making. They may consider it appropriate to refer constituents to other Ward Councillors who are not on the Development Control Committee and may therefore be less restricted in the help they can give. Members of the Committee may, nevertheless, give procedural advice if approached, but should also refer the person to the relevant case planning officer for detailed advice and discussion. ***Members should declare and record in writing, instances of lobbying, including any written representations received,*** such record to be passed to the case planning officer by the Member concerned.
- 4.2 Members of the Development Control Committee and Officers should avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants and objectors. However, this will not preclude Officers from giving guidance in pre-application discussions, particularly in the light of the provisions of established policy. It must be made clear that such guidance will not commit the authority to determining the application in any particular way.
- 4.3 If Development Control Committee members express an opinion to a person lobbying them, they must make it clear that they will only be in a position to take a final decision after having heard all the relevant facts and arguments at the formal Committee meeting. Councillors should not commit themselves one way or the other before hearing all facts and arguments. Councillors who are members of the Development Control Committee who participate in high profile, active lobbying for a particular outcome will need carefully to consider their position in relation to the Committee. It should be stressed that a Member who is predisposed to make a decision in one particular way (e.g. approve an application) need not exclude himself/herself on the grounds of bias, whereas a Member who has predetermined the matter must do so. Only the Member can make this judgement; the acid test is whether he/she is capable of keeping an open mind up to the point that a decision is reached.
- 4.4 Councillors are encouraged to seek further information on any planning matter from Officers but must not seek to influence Officers towards a particular recommendation.
- 4.5 Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer or a member of his staff (see also the Members' Code of Conduct). Advice should be sought at the earliest opportunity and in advance

of the relevant meeting. Similarly, any instances of persistent lobbying should be referred to the Monitoring Officer or a member of his staff.

5. Procedure at DC Committee Meetings

5.1 Although the formal rules of debate set out in the City Council's standing orders do not apply, it is vital that decisions on individual applications are properly reached and seen to be properly reached. *The electronic voting system should be used at all times when it is present and working (otherwise voting should be made by a show of hands) and the Chair will read out the result immediately after the vote has been displayed/verified.*

5.2 When there is any reasonable doubt about the outcome of a vote (however taken), the Chair must be allowed to rule on the matter in the interests of fairness. If necessary, in exceptional circumstances, the vote might have to be repeated.

5.3 Appropriate formality should be observed in several key areas:-

- decisions contrary to officers' recommendations and/or the Development Plan (see section 6 below)
- site visits (see separate note - Appendix 1)
- speakers (see separate note - Appendix 2)

6. Decisions Contrary to Officer Recommendation and/or the Development Framework

6.1 The basic rule on the determination of planning applications is that decisions must be based only on material planning considerations. Furthermore, whether an application is approved or refused, the decision notice issued subsequently must record the relevant policies and proposals of the *Development Framework* and a clear and precise statement of the reasons for the decision. These matters will all be covered in the Officers' report (including a recommendation) placed before the Committee in respect of each application. It is when Members wish to depart from those recommendations that problems can occur unless the following guidance is carefully followed. It should also be remembered that all the officers who submit reports and attend meetings do so as impartial advisers to the Committee. Although recommendations are made and advice given, both in writing and orally, the final decisions are made by Members in the light of all relevant material, including the potential consequences of their actions.

6.2 Where elected Members determine an application at variance with the Officers' recommendations, the Minutes should clearly record their reasons for doing so. This will involve the mover and seconder of such a motion completing and submitting to the Chair a standard (yellow) form kept for this purpose. Officers should then be given the opportunity to explain the implications of the motion before any such decisions are made by Members.

6.3 If the officers' recommendation is for approval and the motion is for refusal, clear and sustainable grounds for refusal will need to be specified, taking into account the

provisions of the *Development Framework*. Provided this has been done, the matter can be decided at the meeting.

- 6.4 If however the officers' recommendation is for refusal and the motion is for approval (again, for clear and sustainable reasons), there may not be sufficient opportunity to advise on and draft conditions and limitations that should be attached to an approval, or to advise on the implications of such a decision in terms of the *Development Framework*. In such a case, if the motion to approve is passed, it should be made subject to a requirement that the Officers report back to a future meeting with suggested conditions and limitations to be attached to the planning approval.
- 6.5 In the case of officers' recommendations for approval which Councillors wish to approve but with additional or amended conditions/limitations, officers should be invited to prepare suggested wording and bring this back for approval to a future meeting, unless the new wording is straightforward and can be agreed at the initial meeting.
- 6.6 Whatever the case, the yellow standard form will be used to aid clarity of decision-making.
- 6.7 Particular care should be taken to avoid situations in which no decision is taken on an application (e.g. when a motion to refuse planning permission is lost, and no other motion is forthcoming from the Committee). The law states that in these circumstances, the local planning authority is deemed to have refused permission for no stated reasons. The applicant's right of appeal would then arise and the Council be in great difficulty defending such an appeal. It is likely that it would also be ordered to pay the appellant's costs.
- 6.8 Whatever decision is made on a planning application, clear reasons for that decision must be agreed and recorded. Members themselves may be required to justify these reasons, for example, in a subsequent appeal against a decision where the officers' advice was not followed.

7. Regular Review of Decisions

- 7.1 In the interests of promoting quality in decision making, Members of the Development Control Committee should visit a sample of implemented planning permissions to review the effectiveness or otherwise of the decisions they, or Officers acting under delegated powers, have made. Such a review should be undertaken at least annually and include examples from a broad range of categories, including major and minor developments, appeals, listed building works and enforcement cases.
- 7.2 Any review undertaken should additionally be referred to the Environment Overview Commission who will determine whether it gives rise to the need to reconsider any policies or improve best practice.
- 7.3 No Member appointed to the Development Control Committee *will* participate in a meeting without first having undertaken a period of appropriate training in planning procedures. Members who have already been trained *must* refresh their knowledge from time to time. This includes participation in the informal discussion sessions that

take place following the close of formal business at most meetings of the Committee *and applies especially where there has been a break in continuous membership.*

8. Hospitality

- 8.1 All Members and Officers are subject to the Council's Codes of Conduct. Members should be particularly aware of their Codes in relation to planning matters and should be seen to comply with them at all times to avoid impropriety or the appearance of impropriety. Examples of the latter might be the voluntary registering of hospitality that has been offered but refused, or is of a value below the threshold for compulsory registration (regardless of whether it is in fact accepted or refused).

9. Political Group Meetings

- 9.1 Elected Members have an overriding duty to the whole local community and although they may be strongly influenced by the views of others and particularly their political group, it is their responsibility alone to decide what view to take on any matter determined by the Development Control Committee.

- 9.2 It is acknowledged that political groups may have a policy on particular types of development or on major schemes but Members of the Development Control Committee should at all times keep an open mind on applications until all the arguments have been heard. In particular, group meetings should not be used to decide how Members should vote. This could constitute bias or predetermination on the part of individual members and might lead to a decision being challenged in the courts or a complaint being made to the local government ombudsman.

10. Disclosure of Information

- 10.1 Members may sometimes be approached by applicants or objectors attempting to give information which does not form part of the formal application or is misleading, untrue or irrelevant. The use of such information to influence the decision making process will be improper unless the information has been made available to all parties as part of the consultation process. Members receiving such unsolicited information should seek advice from Officers at the earliest opportunity. Guidance on the information's relevance etc. will be given by the Officers.

- 10.2 No member should circulate any documents or information direct to the Development Control Committee unless that information has been first submitted to Officers to enable it to form part of the public consultation process on the application or to be admitted as a background paper to the report.

11. Conclusion

- 11.1 This Code is intended to provide general guidance covering the areas of practice in which difficulties are most likely to arise. It cannot provide ready-made answers to the infinite variety of real circumstances and real questions that occur on a daily basis. The golden rule therefore must be that Members should seek guidance from the appropriate officer/s whenever they encounter a situation of the kinds outlined in this Code on which they need advice.

SITE VISITS

Requests for Site Visits

Site visits should be used only where the expected benefit is substantial. Examples of situations where the expected benefit would be substantial include:-

- cases where a plan or photograph does not adequately indicate the relationship of the application proposal to neighbouring property;
- cases where the effect on amenity cannot readily be discerned from plans;
- cases where members feel they are unable to visualise the site from plans or information supplied to them;
- cases where the proposal is particularly contentious;
- cases where the design, massing or scale is particularly relevant, such as in a conservation area.

Site visits to be proposed only when the debate on the item has commenced: i.e. following Officer, Applicant and Third-Party presentations.

In proposing a site visit a Member will be required to indicate their reason for such a request. The proposal should be in the form of a motion (set out on the appropriate form) that further consideration of the matter be deferred pending a site visit by the Committee. Any request for a site visit must be agreed by a majority of the Members present and voting at the meeting. It is good practice for site visits to be proposed only after the Committee has heard from any speakers present at the meeting. The electronic voting system should be used when determining a motion for a site visit.

The site visit will consist of an inspection by the Development Control Committee with Officer assistance to explain the impact of the proposed development. Members will be given the most appropriate view of the development proposal commensurate with rights of access to private land. It is primarily a matter for the owner/occupier whether Members, Officers or the public are allowed entry onto the application site, although planning legislation does provide formal rights of entry for persons who have been duly authorised in writing by the local planning authority.

Role of Members at Site Visits

All Members of the Committee will be advised of the date and time of the site visit, but any Member who has previously declared an interest in the proposal under consideration should not participate in the related site visit. A site visit meeting must at all times be quorate in accordance with the Council's Standing Orders.

Site visits are fact finding exercises. Detailed discussion on the site of the matter under consideration should be avoided. Applicants and/or their agents will be present at most site visits in order to secure access or facilitate the visit. Members may only ask questions of the applicant or agent through the Chair and should not enter into any discussions regarding the

details or merits of the application. These matters should be left to any subsequent debate at the Civic Centre. Members should be aware that at the site visit they are still formally in session as a Committee and should act accordingly. In particular, they should not wander around the site, either singly or in groups, but should remain within earshot of the Chair and Officers at all times. This is in order to maintain the integrity of the process by ensuring that all Members have the opportunity to receive the same information throughout (including when they return to the Civic Centre to make formal decisions).

Other interested parties and members of the public will be advised of the date and time of site visits and it is accepted that they will often attend. ***Wherever possible, interested parties and members of the public will be advised of the procedure to be followed on site visits and the reasons why.*** However, if any third party, including a Ward Member not on the Development Control Committee, approaches a Committee Member, they should not be engaged in any conversation, whether about the application or otherwise, but referred to an Officer or the Chair of the Committee. It is vital that the perception, as well as the reality, of fair and unbiased decision making is maintained at all times.

Following the site inspection it may be appropriate for relevant issues of a wider nature than the site itself to be viewed from the coach on leaving the site. These matters will be pointed out by Officers and only questions relating to the physical features being pointed out will be accepted.

For the reasons outlined above, it is preferable for all Committee Members to travel to and from the site on the coach provided for that purpose.

Decisions following a Site Visit

Debate on the features seen on the site visit together with the Officer's report and any other supporting material will be undertaken once the Committee has returned to the Civic Centre and after allowing any representations to be heard from applicants or third parties in accordance with usual procedures.

SPEAKERS

Since 1994, when the Development Control Committee's procedures underwent a major review in the light of various national developments, speakers have been welcome to address the Committee in person. To ensure fairness to all parties, the following procedure has been developed and operates on every occasion where speakers are present.

The Committee will normally accept only one representative from the objector and one from the applicant to address Members. An application to speak must be made by no later than noon on the working day before the Committee meeting. In some cases more than one representative can address Committee if they intend to deal with different issues (for example, objectors could be represented by both local residents and a national organisation). The decision on how many speakers to allow on a particular matter rests with the Committee (sometimes only one party (applicant or objector) wishes to speak and the procedure is modified accordingly). Councillors who are not members of the Committee may apply to address the Committee in the same way as members of the public, although they should not participate in this way if they have a prejudicial interest in the matter.

The procedure when speakers address the Committee is as follows:-

- Planning Officer presents report
- Objector presents objection/s (up to 5 minutes)
- Members have opportunity to question the objector
- Applicant presents case for approval (up to 5 minutes)
- Members have opportunity to question applicant
- Planning Officer responds, commenting on points raised during the presentations and questions asked by Members
- Members debate and determine the matter in the usual way, taking into account material considerations arising from the presentations