

CODE OF GOOD PRACTICE: PROBITY IN PLANNING

1 Introduction

- 1.1 Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It can be highly contentious. It is important that the process is characterised by open and transparent decision-making.
- 1.2 One of the key purposes of the planning system is to control development in the public interest. Performing this role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore, that the Council makes planning decisions affecting those interests openly, impartially, with sound judgement and for justifiable reasons. There should be no grounds for suggesting that a decision has been biased, not impartial or not well founded in any way.
- 1.3 This Code applies to all councillors (whether or not they are members of the Planning Committee) at all times when they involve themselves in the planning process. This includes both decision making meetings of the Council and less formal situations, such as meetings with officers or the public and consultative meetings

2. Conduct of Councillors and Officers

2.1 General

- 2.1.1 Councillors and officers have different, but complementary roles both serving the public. Councillors are responsible to the electorate, officers are responsible to the Council as a whole.
- 2.1.2 Both councillors and officers are guided by codes of conduct. The Councillors' Code of Conduct provides guidance on standards for councillors. Breaches of the Code may be regarded as maladministration by the Local Government Ombudsman and may lead to a councillor being reported to the Standards Committee. Such a report may result in sanctions being imposed upon the councillor concerned. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. In addition to these codes, the Council's Procedural Rules set down rules which govern the conduct of Council business.
- 2.1.3 Councillors must not instruct officers to make a particular recommendation nor to take a particular course of action other than through a decision of the Council or one of its committees. Officers must give objective, impartial planning advice, based on their professional judgement and not be compromised or influenced by political considerations. Chartered Town Planners may only advocate their own professional view.

2.2 Public Duty

Councillors have a special duty to their ward constituents including those who did not vote for them. However their overriding duty is to the whole community. The Council's District Plan is adopted in the interests of the whole community, following public consultation. It therefore reflects the overall public interest, rather than those individuals or organisations. Councillors and officers must support the Council's planning policies and make decisions in accordance with them, unless there are sound planning reasons for not doing so.

2.3 Voting and Impartiality

2.3.1 Notwithstanding the provisions of s.25 Localism Act 2011 members of the Planning Committee should not declare which way they intend to vote in advance of the consideration of an application. To do so may indicate pre-judgment of the application and expose the Council to the possibility of legal challenge as the exact meaning of s.25 has yet to be determined by the courts. Further, even if s.25 does prevent a legal challenge to the validity of a decision it offers no protection against allegations of maladministration or a breach of the Code of Conduct. Members should not make up their minds until they have read the relevant committee reports, heard the evidence and considered the representations. It is important that members hear all the evidence and representations prior to reaching a decision.

Consequently members should ensure that they are present in the Council Chamber/Committee Room at all times whilst an item is being discussed. In the event that a member arrives after consideration of a particular item has commenced or leaves the Council Chamber/ Committee Room during the consideration of an item and then returns then that Member should not vote on that item.

2.3.2 Councillors who are also members of town or parish councils may find that they are expected to express a view at a Town or Parish Council meeting or vote on whether the town or parish council should object or comment on a proposal from its point of view. In such circumstances they should not declare outright support or opposition for a proposal and if they chose to vote should make clear that they may find themselves having to vote differently when sitting on the committee, having heard the evidence, technical and legal background from officers. In particularly contentious cases councillors are advised to abstain from the town or parish council vote to make clear that they are not prejudicing the decision they will have to make as a district councillor. This will assist in ensuring that the propriety of their vote at the Council's committee meeting cannot be challenged.

2.3.3 If a councillor does declare his outright support for or opposition to a proposal at a town or parish meeting or elsewhere before the matter has been put before the committee where that councillor would be entitled to vote he should, if attending the committee meeting when the matter is being discussed or reported, make an open declaration to that meeting to that effect and take no part in the voting on that item. This does not mean that councillors on the committee cannot make a comment or reflect local concerns about a proposal before it is considered. However, the view or comment should not pre-determine or be seen to pre-determine the way the councillor will vote.

2.3.4 Councillors should not organise support for or against a planning application and should not lobby other councillors since this would also signal that they had made up their mind before hearing the evidence. Each councillor should make up his own mind on the evidence and facts presented to the committee.

2.3.5 The basis of the planning system is the consideration of private proposals against wider public interests. Opposing views are often strongly held by those involved. Whilst councillors should take account of various views expressed on an application they should not favour or show bias against or towards any particular person, company or group or any particular site or locality. They should not put themselves in a position where they may appear to do so.

2.4 Gifts and Hospitality

Councillors should be very cautious about accepting gifts and hospitality and must follow the ~~the~~ Councillors' Code of Conduct. They should also have regard to the Guidance on receipt of gifts and hospitality in part 5 of the Members' Handbook. Officers should follow that Guidance.

2.5 Declaration and Registration of Interests

- 2.5.1 The Councillors' Code of Conduct sets out requirements and guidance for councillors, for the registration and declaration of interests.⁵⁷ These must be followed scrupulously and councillors should review the situation regularly. It must be borne in mind that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. Responsibility for this rests individually with each councillor. When declaring an interest at committee this should be done at the beginning of the meeting and councillors should be clear and specific in identifying the item on the agenda in which they have a pecuniary or non-pecuniary interest and if so the nature of that interest.
- 2.5.2 Officers must declare any personal or financial interest in any planning matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to councillors or other officers on them. An officer with a personal or financial interest in a planning matter must withdraw from any relevant committee meeting whilst that matter is discussed. Planning officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental or other pressure or amenity groups.
- ## 2.6 Development Proposals Submitted by Councillors and Officers
- 2.6.1 Proposals to Council by serving and former councillors and officers and their close friends and relatives could easily give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way to give no grounds for accusations of favouritism. Applications which are recommended for approval will be reported to the committee and not dealt with by officers under delegated powers.
- 2.6.2 When the councillor or employee has left the council, after a period of 2 years the application can, if appropriate be dealt with under delegated powers.
- 2.6.3 Serving councillors who act as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their employers as part of their job, must declare an interest and take no part in the processing of the application or in the decision-making process. Any councillor who is a planning or similar agent will not be appointed to the committee.
- 2.6.4 Members of the committee should not act as agents or submit planning applications for other parties or voluntary bodies. To do so would give rise to suspicion that the committee was not impartial or may be influenced in the decision making process.
- 2.6.5 The procedures set out in the paragraphs 2.6.1 - 2.6.3 above shall also apply in relation to determining applications and notifications to carry out works to trees.

2.7 Council Development

The Council's own proposals for development and determining applications and notifications to carry out works to trees must be dealt with on exactly the same basis as applications submitted by members of the public. Officers must make recommendations having regard only to proper planning or tree matters and must not have regard to any other benefits, financial or otherwise, which may accrue to the Council as a result of any particular decision on a planning or tree proposal. Councillors must make decisions similarly. Such applications will be reported to the committee and not dealt with by officers under delegated powers.

2.8 Lobbying of and by Councillors

2.8.1 Lobbying is an attempt to influence councillors' views in order to achieve a particular decision. It can be of councillors by applicants, agents or objectors or by other councillors. Lobbying may be verbal or by the circulation of letters or documents to all or some councillors. Planning decisions must be made strictly on the facts and policies relating to each application. Lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a councillor being called into question. Notwithstanding the provisions of s.25 Localism Act 2011 when being lobbied, councillors, and members of the committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such circumstances they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant officer in order that their opinions can be included in the officer's report to the committee. If they do express an opinion they should make it clear that they will only be in a position to take a final decision after having received and considered all the relevant evidence and arguments at committee.

2.8.2 A committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a member responds to lobbying by deciding to go public in support of, or against, a particular outcome it would be very difficult for that member to argue convincingly when the committee takes its decision that he has carefully weighed the evidence and arguments presented at committee. Although not amounting to a disclosable or other pecuniary interest according to the Code of Conduct the proper course of action for such a member would be to make an open declaration not to vote. However, this is a severe restriction on the member's wish - duty, even - to represent the views of the electorate. Thus, councillors should, generally, avoid organising support for or opposition to a planning application and avoid lobbying other councillors. Such actions can easily be misunderstood by parties to the application and by the public. Where a member makes a declaration that he or she will not vote then the member should withdraw from the committee table but may remain in the room and speak on behalf of his or her ward members either for or against the application.

2.9 Circulation of Information

Planning applications must be determined on the basis of the documents and information formally submitted. Any submissions from applicants, agents or objectors which are formally received by the Council can properly be taken into account in making a decision. It can cause problems if councillors are given information or assurances by applicants which are not part of the formal application and which are not, therefore, enforceable.

Problems can also arise if councillors are given information by objectors which may be misleading, untrue or irrelevant. It can be problematical if officers are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the committee about their relevance or enforceability. Councillors should forward such information to the officers for consideration prior to the committee meeting.

2.10 No Political Decisions on Planning Applications

Decisions on planning applications must not be taken in political group meetings prior to committee meetings. The view of the Ombudsman was that the use of political whips to influence the outcome of a planning application was contrary to the National Code and amounted to maladministration. There is nothing in the Localism Act 2011 nor the Councillors' Code of Conduct which would contradict this view. It could also give rise to legal challenge.

3. The Decision-Making Process

3.1 Pre-application Discussions

3.1.1 Discussions between a potential applicant and the Council (through its planning officers) prior to the submission of the application can be of considerable benefit to both parties and is encouraged by the Audit Commission, the Local Government Association and the National Planning Forum. It should always be made clear at the outset that the discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional. Advice should be considered and based upon the development plan and material considerations. There should be no significant difference of interpretation of planning officers. In addition, all officers taking part in such discussions should make clear whether or not they are the decision maker. A written note should be made of all potentially contentious meetings and telephone discussions. A follow up letter may be advisable, especially when documentary material has been left with the Council.

3.1.2 Councillors should not seek to advise applicants or agents about the likely acceptability of planning proposals. They should advise prospective applicants to contact the appropriate officer for advice on both merits and procedures. They should make it clear that they will only be in a position to take a decision after having considered the officers' reports and any representations and heard any debate in the committee meeting.

3.1.3 Councillors should not meet applicants or agents or third parties in connection with a current or proposed application. If councillors do agree to meet they should only do so in the presence of a planning officer. In exceptional circumstances, where it is not possible to arrange a meeting in the presence of a planning officer without causing undue delay councillors should notify the relevant planning officer of the proposed meeting beforehand and the notification recorded in the application file. Councillors should listen and may ask questions but should not comment or negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the committee for determination.

3.1.4 If councillors receive information that is relevant to a planning decision they must declare that information to the relevant planning officers and to the committee.

Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting.

3.1.5 Paragraphs 3.1.2 to 3.1.4 above do not apply to councillors when they are acting as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their employers as part of their job. However, they should make it clear to their clients that they cannot and will not use their position as a councillor to influence the outcome of an application.

3.1.6 Any councillor may request that an application delegated to officers for determination be reported to committee for determination.

3.2 Reports to Committee

Officer reports to committee should be accurate and cover, amongst other things, the substance of objections and views of consultees. Relevant points should include a clear exposition of the development plan, the site, its related history and any other material considerations. Reports should contain a clear written recommendation. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur. If the report's recommendation is contrary to the provisions of the development plan the material considerations which justify this must be clearly stated.

3.3 Committee Procedures and Decision

3.3.1 Pre-committee briefing meetings between officers and councillors are not part of a formal committee proceeding. They must always be after the agenda has been set and officers' recommendations have been made. The purpose of the meetings is to inform the Chair/Vice-Chair on planning issues, the reasons for officer recommendations and to give the Chair/Vice-Chair an opportunity to give notice of or to be told about any potential problems or the need for more information.

3.3.2 Councillors should endeavour to obtain factual information from officers prior to the meeting. This can assist in reducing delays which may be caused by deferral to obtain further information.

3.3.3 The committee's decision must be in accordance with the provisions of the development plan unless material considerations indicate otherwise. When councillors propose to make a decision contrary to officer recommendation the proposer must set out clearly the reasons for so doing. The Chair will ensure that the planning officer is given an opportunity to comment before a vote is taken. Any decision contrary to the provisions of the Development Plan must be clearly justified and recorded in the Minutes.

3.3.4 Any information received after preparation of the committee report which is relevant to the determination of an application will be summarised on the supplementary representation sheet circulated prior to the meeting. Any information or documents received after its printing will be verbally reported to the meeting. In certain circumstances consideration of the application may need to be deferred.

3.4 Deferrals

The decision on any application should not be deferred without proper justification. Justification for deferring a decision might be for one of the following reasons:

- Additional information necessary for determining the application is required

- Councillors decide that a site visit is required

A site visit is not part of the formal committee proceedings and is not a forum for debate or for making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions or as an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

3.5 Public Attendance at Committee Meetings

3.5.1 All planning applications, other than those determined by officers exercising delegated powers, will be considered in public session and all background information will be made available for public inspection upon publication of the agenda papers, unless there are specific reasons for exempting information in accordance with the Local Government Act 1972.

3.5.2 Applicants, agents and members of the public, representatives of parish councils and members of the Council who are not members of the committee may speak at the meeting. The procedures for notifying the Council and speaking are set out in part 5 of the Constitution.

3.6 Site Visits

Site visits can cause delay and additional costs and should only be used when the expected benefit is substantial. A site visit is only likely to be necessary if the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers. The reason for requesting a site visit must be clearly set out by the proposer and recorded in the Minutes. All site visits must be carried out in accordance with the Council's agreed procedures set out in Appendix 1 to this Code. A site visit is not part of the formal committee proceedings and is not a forum for debate or making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions or as an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

4. Administrative Matters

4.1 Member Training

Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices, either verbally at meetings or as briefing notes (for example in the Members' Bulletin). Officers will arrange an annual basic mandatory training session for Councillors who are members or substitute members of Planning Committee. This training must be undertaken before participating in decision making at Planning Committee. All members of the Council who are not on Planning Committee or a substitute member of planning committee will be invited to attend on a voluntary basis. Officers will arrange and offer (in consultation with the Chair of Planning) a programme of topic focussed training to run throughout the year. Topics to include review of decision made, visits to implemented schemes and updates on changes to planning law.

4.2 Monitoring of Decisions

The Council should monitor planning decisions taken, on an annual basis, both in terms of quality and consistency. Annually, councillors will visit a sample of

implemented planning permissions to assess the quality of the decisions. The committee should formally consider the annual report and decide whether it gives rise to the need to review any policies or practices. The review may include information identifying the number of cases where officers' recommendations were not accepted and the outcome of any related appeal decisions. The results of the monitoring will be reported to councillors along with any recommendations to improve quality, consistency or performance.

4.3 Record Keeping

The planning application files should be complete and accurate containing sufficient information and itemising events so that the reason for the decision can be easily understood. Only "background papers" as defined in the Local Government Act 1972 are automatically available as a right to third parties. These would include, in addition to the application document, associated letters and supporting information, replies from consultees and letters from supporters and objectors. The same principles apply to applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by councillors. These principles apply equally to enforcement and development framework matters.

4.4 Complaints

Any complaints received about the way in which a planning application or other planning matter has been dealt with in terms of procedures or fairness will be investigated under the Council's complaints procedure. The fact that someone may disagree with the decision the Council has reached is not a complaint which will normally necessitate investigation as such. However, officers will explain the reasons for the Council's decision in any particular case.

APPENDIX 1

PLANNING COMMITTEE PROCEDURE FOR MEMBERS' SITE VISITS

1. Procedure

- 1.1 The decision to visit the site of a current planning application is taken by the committee and the reasons are recorded in the minutes of the meeting. The Divisional Head: Planning and Building Control is also authorised to organise a meeting if it is necessary in advance of a committee meeting.
- 1.2 The purpose of the site visit is to acquaint members with the site, not to hold a debate or take a decision other than at the Committee Meeting.
- 1.3 Site visits normally take place during the morning of the relevant meeting.
- 1.4 The applicant or his agent is notified of the visit and requested to make access available and peg out the proposed location of the building(s), if appropriate. The applicant may attend the site visit, but may not make any representations.
- 1.5 Two representatives of the town or parish council may attend but may not make representations.
- 1.6 The local District Council member(s) is/are notified and he should contact the Chair if he wishes to attend but may not make representations at the site visit.
- 1.7 On site, the Chair usually states the reasons for the visit and invites the planning office to run briefly through the proposal. Members should remain in one group for the duration of the visit.
- 1.8 Sometimes, neighbours and other interested persons are also at the site, particularly if it is next to public land. The landowner has the right under common law to exclude anyone from his land if he so chooses. Members are requested to ignore unauthorised representations.

2. Notes

- 2.1 Apologies for absence from members to the Chair assist in the conduct of the meeting and timekeeping.
- 2.2 Should a member be delayed or in any doubt about the location of a site, he should contact the Chair.

APPENDIX 2

PROCEDURE FOR PARISH/TOWN COUNCIL REPRESENTATIVES/ MEMBERS OF THE PUBLIC ATTENDING MEETINGS OF THE PLANNING COMMITTEE

1. Agendas

- 1.1 The Council will send out the agenda sheets for all committee meetings to all parish and town councils, unless a parish/town council has specifically requested not to receive any agendas.
- 1.2 The agenda sheets will be sent out a week before the meeting.
- 1.3 If the parish/town council would like a copy of a particular report, the clerk should telephone the committee officer listed at the end of the agenda.

2. Attendance by Parish/Town Councillors and Members of the Public

- 2.1 Town/parish councils and applicants/agents, objectors and supporters may make representations on all applications. If an application is recommended for approval and there are no registered speakers against the application the applicant/agent will not have the right to make representations.
- 2.2 Two representatives of the town or parish council may also attend site visits. (see Procedure for Members' Site Visits above).
- 2.3. A town or parish council representative and members of the public may attend the meeting and speak on any application. They must register with the Democratic Services Officer at Uttlesford District Council (telephone 01799 510410) or email: committee@uttlesford.gov.uk by 2pm on the day before the meeting.

The order of speaking for each application will be as follows

- 1. Non-committee member
- 2. Supporters
- 3. Objectors
- 4. Town or parish council
- 5. Applicant or Agent

- 2.4 A town/parish council representative may speak for up to 5 minutes, members of the public may speak for up to 4 minutes. Applicants and their representatives may speak for up to 15 minutes. Ten speaking slots are available between supporters/ objectors.
- 2.5 At the meeting those making representations should sit in the public area until the relevant item is to be considered.
- 2.6 Those making representations should sit at the allotted desk alongside members to make

their statement and having made their statement should then return to the public area (or leave the meeting).