

Revised version recommended by officers 2011

Working Together

The Planning Code of Good Practice for Members of Wiltshire Council

1. Why a Code of Good Practice is Required

- 1.1. As a local councillor you will inevitably be involved in planning matters; as a councillor representing your division's constituents; as a councillor responsible for overseeing the planning framework for Wiltshire, or as a councillor responsible for deciding planning applications at an area or strategic planning committee. You will have a crucial role to play in both making the planning system work and ensuring the best possible outcomes for the community, both now and in the future.
- 1.2. The key purpose of planning is to manage development in the public interest. However, concerns are sometimes expressed about the probity of councillors meeting developers, applicants and interest groups and then taking decisions on an impartial basis. The aim of this code of good practice is to ensure that in the planning process in Wiltshire there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. Your role as a member of the council is to make planning decisions openly, impartially, with legally sound judgement and for justifiable reasons. This Code of Good Practice has been prepared to help you in this task.

2. When the Code of Good Practice Applies

- 2.1. This code applies to councillors at all times when involving themselves in the planning process. This includes not just the taking part in the planning committee meetings of the council, but on less formal occasions, such as meetings with officers, the public, parish/town/city councils and pre-application and consultation meetings. It applies equally to planning enforcement matters or site-specific policy issues as it does to planning applications.
- 2.2. If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.
- 2.3. This code is based upon the 'Model Members Planning Code' adopted by the Association of Council Secretaries and Solicitors in 2003 (updated in 2007). The Model Code was produced following consultation with the Standards for England, the Local Government Ombudsman and the Audit Commission.

3. Relationship to the Members' Code of Conduct

- 3.1. The Members' Code of Conduct must be complied with at all times. This Planning Code of Good Practice seeks to explain and supplement the Members' Code of Conduct for the purposes of planning. It provides helpful guidance for members. However, you are advised that if you do not abide by this Code of Good Practice, you may put the council at risk of proceedings on the legality or maladministration of the related decision and yourself at risk of either being named in a report made to the Standards Committee or council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee.
- 3.2. In the event of a conflict between this Planning Code of Good Practice and the Members' Code of Conduct the latter will prevail.

4. Development Proposals and Interests under the Members' Code

- 4.1. It is a fundamental point of principle that those who have a significant interest in the outcome of a planning decision should not take part in the decision making process, for example, Members may wish to make their own planning proposals, such as extending their own property.. Members should disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other members. Such interests should be declared at the start of the meeting.
- 4.2. Where your interest is personal and prejudicial:
 - Notify the Monitoring Officer in writing or by e-mail of your interest, if at all possible no later than the submission of the proposal;
 - Consider employing an agent to act on your behalf in dealing with officers and any public speaking at Committee - at any meeting, you must ensure that you leave the room whilst the meeting considers it;
 - Ask another elected member to represent division views*;
 - Do not participate in the processing of the application or the making of any decision on the matter by the Council;
 - Do not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor.
 - Your proposal will not be dealt with by officers under delegated powers if a valid planning objection to it is received. Where this happens it will be reported to a committee for a decision.
 - At the meeting of the committee you may speak on the application, but only to the extent permitted for members of the public (not as a local member) in accordance with paragraph 9.6 below. You must then leave the room.

* It is perfectly acceptable for councillors to nominate a substitute(s) to undertake their planning responsibilities, including application 'call in', if they have a conflict of interest or during periods of absence such as holidays or illness. In the case of death, the Chairman will nominate a stand in.

5. Fettering Discretion in the Planning Process

- 5.1. The integrity and public support for the planning process relies on members of planning committees making decisions that are open, transparent and above board. To participate in decision-making on planning matters, it is essential that you do not state how you will vote on planning matters prior to formal consideration of them at the meeting of the planning committee where you will have the officer's report and hear the evidence and arguments on both sides.
- 5.2. If you appear to have made your mind up prior to the meeting by publicly supporting or opposing a proposal, or have announced how you will vote, you will have fettered your discretion. Taking part in the decision in these circumstances will put the council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination, or a failure to take into account all of the factors enabling the proposal to be considered on its merits. Where you have fettered your discretion, do not speak and vote on a proposal and consider whether you should withdraw from the council meeting for that item. You should ensure that your decision not to speak and vote on these grounds is recorded in the minutes. However, where you are representing the views of your local electors and have fettered your discretion, you may still speak in your capacity as a local member as long as you do not have a personal and prejudicial interest. In these circumstances, you should ensure that your actions are recorded and you must not vote.
- 5.3. *Where I am a member of a parish, town or city council, can I still attend the parish/town/city council meetings where planning matters are discussed and still be a member of a Wiltshire Council planning committee?*

You can still take part in debates on planning proposals at parish/town/city council meetings, provided that:

- The proposal does not substantially affect the well being or financial standing of the city/town/parish council;
- You must make it clear to them that any views you express are based on the limited information before you only and that you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee;
- You make it clear that you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that parish, as and when it comes before the Committee and you hear all of the relevant information;
- When the development proposal comes up for consideration at a Wiltshire Council Planning Committee, if you intend to speak or vote you should disclose the personal interest regarding your membership or role at the town/city or parish council.

6. Contact with Applicants, Developers and Objectors

6.1. As a community leader and local representative you will want to be involved in relevant public meetings, pre-application discussions and policy production. Councillors can involve themselves in discussions with developers and others about planning matters provided you keep to the following guidelines:

- Where developers organise a public exhibition or display of their proposals, it is acceptable to visit to examine the proposals and ask questions of the developers to ensure that you are fully informed of the nature of the proposals. You may feed in your own and your local community's concerns and issues and engage in discussion. However, be aware that you must have an open mind at the point of decision-making and therefore you should not state how you or other members might vote.
- Pre-application meetings with developers or prospective applicants may be a positive way of engaging the developer to seek to ensure that community needs are met. However, if approached, you should refer any requests for such a meeting to an officer of the Development Service. The officer(s) will then organise the meeting and ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action and that the meeting is properly recorded.
- Refer those who approach you for planning, procedural or technical advice to officers;
- Advise those looking for policy guidance to examine the policies in adopted local plans and the Local Development Framework;
- Avoid meeting developers alone or putting yourself in a position where you appear to favour a person, company or group.

7. Lobbying and Councillors

7.1. Lobbying is recognised as a normal and proper part of the political process. However, it is important for members to protect their impartiality and integrity in planning matters. You will not breach this code of Good Practice by listening to or receiving viewpoints from residents or other interested parties provided that you make it clear that you are keeping an open mind. Expressing an intention to vote one way or another before a meeting of the Council would prejudice your impartiality. Councillor's attention is drawn to the following advice: -

- Avoid accepting gifts or hospitality from any person involved or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure that its acceptance is declared as soon as possible and enter it into the register of interests where its value exceeds £25 (twenty five pounds) in writing within 28 days of accepting such hospitality;
- Pass a copy of any lobbying correspondence that you receive to the relevant Development Control Area Team Manager or the case officer at the earliest opportunity;

- Do not pressurise or lobby officers for a particular recommendation;
- Promptly refer to the Development Control Area Team Manager any offers made to you of planning gain or constraint of development, through a Section 106 Planning Obligation or otherwise;
- Inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will in turn advise the appropriate officers to follow the matter up.
- Political Group Meetings should never dictate how Members should vote on a planning issue and members should not excessively lobby fellow councillors regarding concerns or views, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

7.2. *Can I remain a member of an amenity society when it makes representations on planning matters?*

There are many general interest groups who concentrate on issues beyond particular planning proposals. These include bodies such as the National Trust; CPRE; Wiltshire Archaeology and Natural History Society; Ramblers Association; local civic societies. It is acceptable to be members of these societies, provided that a personal interest is declared when that organisation has made representations on a particular proposal and you make it clear that you have reserved judgement and the independence to make up your own mind on each separate proposal. However, if you become a member of or lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals, you will have fettered your discretion and are likely to have a personal and prejudicial interest.

8. The Role of Officers

8.1. Officers and members work together to deliver the outcomes that seek to deliver the right development at the right place at the right time, whilst protecting the built and natural environment. It is therefore essential that there is mutual trust and understanding between officers and members. Officers will advise and assist members in their formulation of planning advice and the determination of applications and will provide:

- Impartial and professional advice;
- Committee reports that include a clear and accurate analysis of the issues in the context of the relevant development plan and other material considerations; the substance of the representations and views of those who have been consulted and a clear recommendation of action.

Officers will process and determine applications in accordance with the council's code of Conduct for Officers and the Royal Town Planning Institute's Code of Professional Conduct.

9. Decision Making

- 9.1. Planning decisions are made within the context of a national, regional and local planning framework and Inspectorate decisions. By law, the council has to make decisions in accordance with the Development Plan unless material planning considerations indicate otherwise.
- 9.2. As a member, you can request that the relevant planning committee considers a planning application in your division and not be dealt with under delegated powers (although there are a few exceptions, such as tree applications, set out in the Scheme of Delegation). To call-in an application, you need to do this in writing, (an electronic proforma is available for electronic submission), and send it to the relevant area team manager or case officer handling the application. Requests must be received within 21 days of the circulation of the weekly list (but there are some exceptions set out in detail in the Scheme of Delegation to Officers – Part 3B of the Constitution). The proforma must record planning reasons why the committee should deal with the application. (It would be helpful if councillors would contact the case officer prior to call-in to discuss the planning issues involved and whether a call-in is necessary.) Following receipt of a request, officers will confirm the action to be taken and keep the member informed when they are ready to make a recommendation.
- 9.3. While there is a strong presumption that the Division Member's views on call in should prevail, if another Member (i.e. one from a neighbouring division which is affected by the development) thinks an application should go to committee and this is contrary to the view of the local Division Member, it will be open to that member to discuss the application with the Chairman of the committee. Having discussed the application and considered the possible impacts the Chairman will then have the ability to ask for the application to proceed to committee for determination. In the rare event that the application is in the Chairman's own division, the adjoining member can discuss the application with the Director of the service.
- 9.4. Councillors should arrive at meeting with an open mind and make a decision only after due consideration of all the information reasonably required to make that decision including any matters reported at the meeting. If you feel that there is insufficient information before you, you should request that further information. If necessary, defer or, if the grounds are adequate, refuse the proposal.
- 9.5. *Site Visits* – Councillors will be expected to be familiar with the site and the issues surrounding the decision when they arrive at a committee meeting. It is acceptable to visit the site and, if necessary, surrounding properties that may be affected by the proposal, as an individual councillor before the meeting, although councillors should not enter onto a site without the consent of the owner. On no account should councillors express a view on the merits of the application to anyone, including the applicant, owner or any third party. With regard to the Strategic Committee, for major and controversial applications arrangements will exceptionally be made for organised site visits where these are considered necessary.

The committee reports and officer presentations should provide ample information

for councillors to determine applications. Very exceptionally, councillors at a committee may feel that a site visit is appropriate to assess the implications of the development. In these cases, reasons for the site visit will be provided and consideration of the application should be deferred pending the visit. (The site visit will be arranged by officers and although the owner's permission will be required, there should be no dialogue with members of the public or applicant/owner during the visit.) The application will then be re-listed on the following agenda.

- 9.6. *Public Speaking at Meetings* - The council has an established procedure in respect of public participation at planning meetings. This should be complied with. In particular, it is not permissible during meetings for members of the public to communicate with councillors debating the proposal either orally or in writing, as this may give the appearance of bias.

Consultees and members of the public who wish to speak at a planning meeting, either in favour of or against an application will be asked to register with Democratic Services. Notification can be given in advance of the meeting, but not before the agenda has been published, by contacting the Democratic Services Officer identified on the agenda. However it should be noted that the Democratic Services Officer must receive registrations in person at least ten minutes prior to the meeting; registration will take place on a first come first served basis and if someone fails to register in person the opportunity to speak will be offered to someone else if appropriate. If a large number of speakers wish to speak on an application, Democratic Services will advise them to coordinate their speakers.

Town/parish/city councils will have an individual four minute representation slot should they wish to speak. Only one representative per council should speak and it is important that the spokesperson expresses the formal views of their council, and not their own individual thoughts. If an application is near the boundary with an adjacent parish, each affected council will have a four minute slot. Any additional time will be at the committee chairman's discretion.

There will be a maximum of three members of the public permitted to speak in objection to an application and three members of the public permitted to speak in support of an application. Where a committee member with a prejudicial interest wants to speak as a member of the public (as they are entitled to do) they will need to secure one of the 'public slots'.

Each speaker will be allotted 3 minutes to address the committee and an audible 30 second warning may sometimes be given before the end of the three minutes.

In the case of particularly controversial or large scale applications the chairman of the committee will have discretion over these timings and will be able to allow more speakers. It is imperative, however, in the interests of natural justice that any increase in time allowance is applied equally between those speaking for and against.

- 9.7. *Decisions Contrary to Officer Recommendation*

There will be occasions when councillors wish to make a decision that conflicts

with the planning officer's recommendation. In these circumstances, members proposing, seconding or supporting such a decision must clearly identify and understand the planning reasons leading to this decision and must give the planning officer an opportunity to explain the implications of it. The reasons for the decision must be given prior to the vote and be recorded. If an application is to be approved, councillors should set out any particular conditions they would like imposed which will be in addition to the 'standard' conditions for that type of development which will be added by officers. An opportunity must be given to the planning officer to comment on conditions suggested by members and if necessary, the application should be deferred to the next available meeting to enable proper consideration to be given to the wording needed to achieve members' objectives or members may delegate to the officers the imposition of suitable conditions.

Reasons for refusal against officer advice must be planning related, clear and convincing. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge or appeal.

Where councillors think they could have concerns about any given recommendation at committee, officers will be happy to discuss the application beforehand to explore the options which may be open to the Members.

In cases where councillors have overturned a recommendation and the applicant lodges an appeal with the Planning Inspectorate which will be dealt with by way of hearing or public inquiry, Members should be prepared to defend that decision. This defence should be made in person or, at the Member's discretion in writing. Where Members attend and give evidence as part of the council's 'official team,' e.g., they are supported by counsel (as opposed to turning up to speak on an individual basis,) a Rule 6 statement will be required which usually has to be submitted nine weeks before the appeal hearing/inquiry. (Members may of course also be called upon to support the council's case on appeal where the decision has been made in line with the officer recommendation.)

10. Training

Planning is a complex area, but one that generates a great deal of interest amongst local residents and is at the heart of much of the activity of the council. Great care needs to be taken over procedural matters and to ensure that consideration of applications takes place in a clear and open manner and that decisions are based on sound planning principles. For these reasons, it is **mandatory** for all elected councillors of Wiltshire Council to have training in planning matters prior to sitting on a planning committee. All elected councillors will be able to attend this training and it will be arranged immediately after each election. For those elected at by-elections, similar training will be made available.

11. The Order of Events at Committee Meetings

Meetings will normally commence at 6 p.m. and the applications will be determined in the order in which they appear in the agenda unless the chairman has valid reasons for changing the order. Officer will try and ensure that applications which are likely to attract large numbers of the public appear early in the agendas. If the order is changed, this will be announced at the start of each meeting. The usual procedure will be:

- a) The planning officer will introduce each item and set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting.
- b) Committee Members will then ask the officer to clarify any points/ask technical questions.
- c) Members of the public who wish to make representations opposing the application will then be invited to do so. (up to 3 minutes each)
- d) Members of the public/applicant/agent (in this order) who wish to make representations in support of the application will then be invited to do so. Where two members of the public wish to speak in support of an application, only the applicant **or** agent will be allowed to speak, not both. If there is only one member of the public wishing to speak both the applicant and agent can speak.
- e) Consultees who wish to make representations will be invited to do so. (up to 3 minutes each)
- f) The town/city or parish council representative, if present, will then be invited to make representations. (up to 4 minutes each)
- g) The division member will be invited to make representations[†].
- h) The planning officer will then have an opportunity to respond to comments or provide clarification of any points raised.
- i) The chairman will then normally ask if anyone is prepared to move the officer recommendation or propose an alternative motion. Once a motion has been seconded it will be open to the councillors to debate it and ask further questions of officers if required and determine the issue. The rules of debate as detailed in Part 4 of the Constitution will apply.

[†] Any division member, be they a member of the committee or not is welcome to attend committee meetings and make representations on any application within their division. Councillors who are part of the committee will have voting rights but those who are not can speak, but are not eligible to vote. Division members who are not on the committee may be invited to participate in any debate at the chairman's discretion.