

**Wiltshire Council
Constitution
Protocol 4
Planning Code of Good
Practice**

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PROTOCOL 4 – PLANNING CODE OF GOOD PRACTICE

1. Purpose of Protocol

- 1.1 The purpose of this Code of Good Practice is to give advice to Members that will preserve the integrity of the Planning system as open and fair to all parties, whilst avoiding rigid and overbearing procedural rules.

2. When this Code of Good Practice Applies

- 2.1 This code applies at all times when Members are involved in the planning process, including:
- 2.1.1 As a Member representing your division's constituents;
 - 2.1.2 As a Member responsible for overseeing the planning framework for Wiltshire; or
 - 2.1.3 As a Member responsible for deciding planning applications at an area or strategic planning committee;
 - 2.1.4 Planning enforcement matters;
 - 2.1.5 Involvement in local and neighbourhood plans;
 - 2.1.6 Occasional involvement in appeals.

3. Relationship to Wiltshire Council's Members' Code of Conduct

- 3.1 The Members' Code of Conduct must be complied with at all times when you are acting in your capacity as a Member. This Planning Code of Good Practice constitutes guidance for Members of Planning Committees. 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 of any related decision or a complaint of maladministration to the Local Government Ombudsman, and yourself at risk of a complaint under the [Members' Code of Conduct](#).
- 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.
- 3.3 If you have any doubts about the application of this Code or Wiltshire Council's Code of Conduct for Members to your own circumstances, and in particular where you may have a [disclosable pecuniary interest](#) in any planning matter, you should seek advice early from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.

4. Development proposals and interests under the Members' Code of Conduct

- 4.1 It is a fundamental point of principle that those who have a material interest in the outcome of a planning decision should not take part in the decision-making process.

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 also be declared at the start of the meeting.

- 4.2 In the event of a member having any material interest or the application concerns a property in the vicinity of their own property then the member should seek guidance from the Monitoring Officer.
- 4.3 The requirements for the registration and declaration of interests are set out in Wiltshire Council's Members' Code of Conduct and in the underlying legislation contained in the [Localism Act 2011](#), and the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).
- 4.4 If you have a disclosable pecuniary interest in any planning matter you must not participate in any discussion of the matter or vote on it at the meeting of the Committee unless you have obtained a dispensation from the Standards Dispensation Sub-Committee. You must withdraw from the meeting room when business relating to your interest is being debated.
- 4.5 In addition, you should:
 - 4.5.1 Consider employing an agent to act on your behalf in dealing with officers and any public speaking at Committee;
 - 4.5.2 Ask another elected member to represent division views;
 - 4.5.3 Not participate in the processing of the application or the making of any decision on the matter by the Council;
 - 4.5.4 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 Member.
- 4.6 If you have another form of interest, you should consult Part 12 of the Constitution, Code of Conduct, to determine if you may speak or remain in the room.
- 4.7 It is acceptable for Members to nominate an alternative Member to undertake their planning responsibilities, including application 'Member request for call-in', if they have a conflict of interest or during periods of absence such as holidays or illness. In the case of death or incapacity the group leader will nominate a stand in in consultation with the relevant Chairman.

5. Your role as a Member of the Planning Authority

- 5.1 To ensure that planning decisions are made openly, impartially, with sound judgment and for justifiable planning reasons.

6. The purpose of the Planning system

6.1 Planning has a positive and proactive role to play at the heart of local government in Wiltshire:

- 6.1.1 It helps the Council to stimulate growth whilst looking after important environmental assets.
- 6.1.2 It can help translate goals into action
- 6.1.3 It balances social, economic and environmental needs to achieve sustainable development.

6.2 Planning decisions are based on balancing many competing interests and making an informed judgement against a local policy (ie local plan and neighbourhood plan) and national policy framework.

6.3 The decision-making process is open and transparent. Decisions can be controversial. The risk of controversy and conflict are heightened by:

- 6.3.1 the openness of a system which invites public opinion before taking decisions; and
- 6.3.2 the legal nature of the development plan and decision notices.

6.4 In other words, members have to take into account not only relevant planning policy when making decisions, but they also have to be aware of the legal framework in which the planning system operates.

7. How the Planning system works

7.1 Planning applications registered by the Council are uploaded to the planning pages of the Council's web site, including details of the plans and reports submitted by applicants; representations received by the Council and consultation responses.

7.2 Each week, a list of applications that have been registered by the Council in the week leading up to publication ('the weekly list') is sent to Members. This contains a description of the proposal, including its location and the name of the Planning Officer handling the application.

7.3 The Council receives over 5,000 planning applications each year. To deal with this workload as efficiently and effectively as possible, the vast majority of these are dealt with by planning officers under delegated powers.

7.4 The Scheme of Delegation to Officers (Part 3D3 of the Constitution) sets out the remits of the Strategic Planning Committee and Area Planning Committees and the rules relating to referring applications to a planning committee.

7.5 However, as a Member, you can request that a planning application in your division be referred to a planning committee and not be dealt with under delegated powers. This is known as a 'Member request for call-in' and is dealt with in [Section 12.2 – 12.10 below](#). There are a few exceptions, such as tree applications, that cannot be called-in and these are set out the Scheme of Delegation.

8. Procedure if the application is decided at committee

8.1 The committee procedure details are included at [this link](#).

9. Bias and Predetermination

9.1 Members of a planning committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. This is because a planning decision may be challenged and ruled unlawful on the ground of bias. The test is:

whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Member was biased.

9.2 In particular, under the Council's Code of Conduct for Members, bias would occur if you place yourself under a financial or other obligation to third parties that might seek to influence you in the performance of your official duties.

9.3 The integrity of 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 have a closed mind and that you make your final decision only when you have seen and heard all the evidence and arguments presented, including the Officer's report and representations on both sides.

9.4 The [Localism Act 2011 Section 25](#) sets out the rules on predetermination. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This could, for example, occur where a Member clearly expresses an intention to vote in a particular way before a meeting. This can lead to legal challenges and planning decisions being set aside.

9.5 The Act makes it clear that a member is not deemed to have had a closed mind on an issue where they make it clear that they are willing to listen to all considerations presented at the committee before deciding on how to vote. A member may not, for example, be automatically prevented from participating in discussion of an issue or voting on it if they have made public statements about their approach to it. Advice should be sought from the Monitoring Officer in these circumstances.

- 9.6 The general position, however, remains that, whatever their views, Members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations ([a summary of these can be found at this link](#)), and must be prepared to change their views in light of all the information presented at the meeting if persuaded that they should.
- 9.7 If you are a Member of a Wiltshire Council planning committee and also a Member of a parish, town or city council, you can still take part in debates on planning proposals at parish/town/city council meetings, provided that:
- 9.7.1 You make it clear at the parish/town or city council meeting 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 a Wiltshire Council planning committee;
 - 9.7.2 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;
 - 9.7.3 When the development proposal comes up for consideration at a Wiltshire Council Planning Committee, you should disclose your interest regarding your membership or role at the town/city or parish council.

10. Discussions and contact with applicants, developers and objectors

- 10.1 Discussions between a potential applicant and the Council can benefit both parties and are encouraged as a way of gathering information. They are not to be seen as a means of influencing Members.
- 10.2 Whilst potential applicants may seek the professional advice of planning officers in relation to relevant planning policies and material planning considerations, on major applications (ie. sites of ten houses or developments of above 1000 square metres floorspace) officers will always encourage potential applicants to discuss their proposals with the local parish, town or city council before submitting a planning application.
- 10.3 Members have an important role to play in such pre-application discussions, bringing your local knowledge and expertise along with an understanding of community views.
- 10.4 As a community leader and local representative, you may want to be involved in relevant public meetings and discussions to help make sure that issues of local concern don't come to light for the first time at a planning committee meeting. You can involve yourself as a Member in discussions with developers and others about planning matters provided you keep to the following guidelines, which also apply to officers:

10.4.1 Where developers organise a public exhibition, or display of their proposals, or arrange a meeting with a parish, town or city council to which you are invited you can:

- visit/attend to examine the proposals;
- ask questions of the developers to ensure that you are fully informed of the nature of the proposals;
- feed in your own and your local community's concerns and issues;
- engage in discussion provided that you always make it clear that any views you express are personal and provisional and will not bind the Council to making a particular decision if an application is subsequently submitted.

10.4.2 Where developers or prospective applicants approach you for an individual meeting you can attend an informal meeting subject to the following caveats:

- avoid giving separate advice on the development plan or material considerations;
- avoid being drawn into negotiations;
- 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, Neighbourhood Plans and the Local Development Framework. These are all available on the [Council's website](#).
- Avoid putting yourself in a position where you appear to favour a person, company or group.

10.5 Irrespective of any position adopted in advance of a planning committee meeting you must have and be seen to have an open mind at the point of decision-making and base your decision on the information available at that time.

11. Lobbying and Members

11.1 Lobbying is a normal and 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 their Division Member or to a member of the planning committee. However, it is important for Members to protect their impartiality and integrity in planning matters.

11.2 This Code of Good Practice recognises the value of listening to or receiving viewpoints from residents or other interested parties provided that you make it clear that your final position will be determined at the end of the planning process when you are aware of all of the material considerations.

11.3 Members' attention is drawn to the following advice:

11.3.1 **Do not** place yourself under a financial or other obligation to any person involved or affected by a planning proposal;

- 11.3.2 **Consider** referring any correspondence that you receive to the relevant Development Management Team Leader or the case officer at the earliest opportunity;
- 11.3.3 **Do not** put pressure on or lobby officers for a particular recommendation or decision;
- 11.3.4 **Do not** do anything which compromises or is likely to compromise the officer's impartiality or professional integrity;
- 11.3.5 **Do** promptly refer to the relevant Development Management Area Team Leader any offers made to you of planning gain or constraint of development, through a Section 106 Planning Obligation or otherwise;
- 11.3.6 **Do** 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.
- 11.3.7 Planning decisions **cannot** be made on a party political basis. Political groups should never dictate how Members should vote on a planning issue and Members should not excessively lobby fellow Members 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.

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

- 11.4 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:
 - 11.4.1 an interest is declared when that organisation has made representations on a particular proposal;
 - 11.4.2 you make it clear that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 11.5 However, if you lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals, you should seek the advice of the Monitoring Officer about any decisions to be made affecting that organisation.

12. Decision making

- 12.1 By law, the council has to make decisions in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan includes the Wiltshire Core Strategy and any made Neighbourhood Plans. The National Planning Policy Framework (NPPF) sets out Government planning policy and is also a material planning consideration.

Member request for Call-in

- 12.2 As a Member, you can request that a planning application in your division be referred to a planning committee and not be dealt with under delegated powers. This is known as a 'Member request for call-in'. There are a few exceptions, such as tree applications, that cannot be called-in and these are set out in the Scheme of Delegation (Part 3D3 of the Constitution).
- 12.3 Before deciding whether to request call-in of any application, you should seek to discuss the matter with the Planning Officer handling the application, or in their absence, with one of the Area Team Leaders overseeing applications in your division.
- 12.4 If you are in agreement with their likely course of action, it will seldom be necessary for the application to be placed before a planning committee. If you are not in agreement, then you will need to activate the Member request for call-in procedure.
- 12.5 While you may be requested by an agent, applicant or parish council to call an application to committee, it is important to carefully consider each request on its planning merits and discuss with the planning officer before agreeing to request a call-in.
- 12.6 To request call-in of an application, you need to complete the [on-line call-in request form](#). The proforma must record the planning reasons why the committee should deal with the application.
- 12.7 Requests to call-in an application **must be received within 21 days of the circulation of the weekly list** on which the application is recorded, although there are some very limited exceptions to this time limit detailed in the Scheme of Delegation. For example, the time limit is 15 days for applications for Permissions in Principle.
- 12.8 The reason for this is that the Government lays down strict time limits for the determination of planning applications, and if these are exceeded applicants may appeal to the Secretary of State, taking the matter out of the hands of the Council.
- 12.9 As applications may be amended during the consultation process, often dealing with issues that have been raised, Members may withdraw their requested call-in at any time up until a committee agenda is published containing a report on the called-in application. Once a report on an application has been published on a committee agenda, the committee will proceed to determine the application (unless the application is withdrawn by the applicant or their agent before the meeting takes place). Members can request to be kept advised as to the date when the application will be put before a planning committee for determination.
- 12.10 While there is a strong presumption that the Division Member's request for call in should prevail, if another Member (i.e. one from a neighbouring division which is materially affected by the development) thinks an application should go to committee, they can make that request in the same way as a request within their own division.

Meeting Reports

- 12.11 Members 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.
- 12.12 Members should expect to receive officer reports that are accurate and include the substance of any objections and consultation responses. The reports should contain a clear assessment of the proposal against the relevant policies of the development plan and any other material planning considerations, with a written recommendation for a decision to be made. If the report's recommendation is contrary to the provisions of the development plan, the material considerations that justify the departure must be clearly stated.
- 12.13 If you feel that there is insufficient information before you to make an informed decision, you should request such further information. In the absence of such further information it may be necessary for the application to be deferred or even refused.

Site Visits

- 12.14 See [Schedule 1 – Wiltshire Council Planning Site Visit Protocol](#) – for full details.
- 12.15 Members will be expected to be familiar with the site and the issues surrounding the application when they arrive at a committee meeting. It is acceptable to visit the site and surrounding properties that may be affected by the proposal as an individual Member before the meeting, although Members should not enter onto a site without the consent of the owner.
- 12.16 On no account should Members express a view on the merits of the application to anyone, including the applicant, owner or any third party.
- 12.17 The Head of Development Management may, after consultation with the chairman of the relevant committee, arrange for an organised site visit before the committee meeting by the committee where this is considered necessary for major and/or controversial applications, or other exceptional circumstances.
- 12.18 The committee reports, and officer presentations should provide ample information for Members to determine applications. If there has been no organised site visit prior to the meeting Members at a committee may, exceptionally, feel that a site visit is appropriate to assess the implications of the development.
- 12.19 In these cases, Members must give reasons for the site visit before consideration of the application for deferral 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.

Public Speaking at Meetings

- 12.20 The council has an established procedure in respect of public participation at planning meetings [as linked to at section 8](#). This should be complied with in the interests of equity.
- 12.21 In particular, it is not permissible during meetings for members of the public to communicate with members either orally or in writing once debate has commenced, as it could be seen as seeking to influence a member improperly and may give the appearance of bias.

Decisions Contrary to Officer Recommendation

- 12.22 Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions, or sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.
- 12.23 If a Member is concerned about an officer recommendation, it may be helpful to discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. A better mutual understanding of each other's reasons may avoid misunderstandings at the meeting.
- 12.24 In circumstances where Members are proposing a decision contrary to the officer recommendation, Members should be prepared to give a full explanation of their planning reasons, including reference to relevant policies, for not agreeing with the officer's recommendation. This is because the applicant and members of the public should be clear about why a decision has been made. The reasons for the decision must be given prior to the vote and be recorded in the minutes.
- 12.25 The Planning Officer should also be given an opportunity to explain the implications of any contrary decision, including an assessment of any reasons put forward for refusal, or conditions suggested for approval. Where a refusal is proposed, this may include an assessment of a likely appeal outcome and chances of a successful award of costs against the Council, should one be made.
- 12.26 In exceptional circumstances, the application may 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.
- 12.27 Reasons for refusal against officer advice must be:
- 12.27.1 planning related;
 - 12.27.2 clear;
 - 12.27.3 evidence based.

This is because at any subsequent appeal, should one be lodged, a Planning Inspector

will carefully scrutinise the reasons and the evidence relied upon.

- 12.28 In cases where members have overturned a recommendation and the applicant lodges an appeal, most appeals will be defended by the Planning Officers employed by the Council. However, there may be rare cases at hearings or public inquiries where planning officers are unable to defend the reasons put forward by members and no external professional can be called upon.
- 12.29 In these circumstances, Members may be required to defend that decision, appearing as the Council's witness. Officers will assist and support but may not be able to give evidence. This is because if they have taken a different stance on the application leading up to the decision, cross examination of them as witnesses at any subsequent appeal will weaken the Council's case

13. Training

- 13.1 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.
- 13.2 For these reasons, it is mandatory for all elected members of Wiltshire Council to undergo training in planning matters prior to sitting on a planning committee. All elected members 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.
- 13.3 The legislation surrounding planning matters is often subject to change. Officers will provide ongoing training, which is also mandatory, including updates through written briefings, e-learning and training events and will be happy to answer questions that Members may raise on planning matters.

14. The role of officers

- 14.1 Officers and members work together 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.
- 14.2 Officers will advise and assist members in their formulation of planning advice and the determination of applications and will provide:
- 14.2.1 Impartial and professional advice;
 - 14.2.2 Committee reports that include a clear and accurate analysis of the issues in the context of the relevant development plan and other material considerations;
 - 14.2.3 Details of the representations and views of those who have been consulted; and
 - 14.2.4 a clear recommendation of action.

SCHEDULE 1 TO PROTOCOL 4– WILTSHIRE COUNCIL PLANNING SITE VISIT PROTOCOL

1. Arranging the visit

- 1.1 When Members have decided in committee that they would like to visit a site, they will be asked to agree a time and date at the end of the meeting. If this is not possible, a schedule for the visit will be agreed between the chairman and officers.
- 1.2 Democratic services will then notify the applicant or their agent of the time and date of the site visit and seek authority for Members and offices to visit the site. Where the application site is on private land, the applicant or agent will be requested to be in attendance only to facilitate access.
- 1.3 All members of the relevant committee (including any substitutes) will be invited to attend the site visit as will the local division member should he or she not be on the committee. Where a proposal would have a significant impact on an adjoining division, the adjoining division member will similarly be invited to attend.
- 1.4 On occasion, officers of other services such as highways or drainage may be invited (by the Head of Development Management or the relevant Area Team Leader) to attend a site visit to clarify factual matters.
- 1.5 Members are reminded that they have no right of entry to private land except by permission of the owner and that they and officers should not enter a private site until all are present and an officer has made contact with the landowner/operator/applicant.
- 1.6 In the unlikely event that the landowner will not give permission to enter a private site, the site will have to be viewed from public highway.

2. Conduct of the visit

- 2.1 The purpose of the site visit is to enable Members to familiarise themselves with the site and its surroundings in order to understand the planning issues related to the proposal more clearly when considering the application at committee.
- 2.2 While it may be necessary for an applicant or his agent to be present on the site (e.g. to provide access or for safety reasons), discussions between Members and the applicant or their agent or any third party should be avoided and they will be advised that lobbying of Members is unacceptable.
- 2.3 At the request of the Chairman, and after taking a note of the Members present for the site visit, the planning officer will describe the proposal to Members and will display and/or circulate appropriate plans or drawings of the proposal. (It is expected that Members will already be familiar with the planning officer's report)

- 2.4 The planning officer will indicate matters of fact in relation to the proposal and surrounding land which Members should take into account when the application is brought back before them for determination.
- 2.5 Questions by Members should be addressed to the planning officer and be of a factual nature, for example, distances to adjoining or objectors' properties; the landscape features to be retained; the status of any nearby heritage assets. If it is necessary to seek information from the applicant or agent on site this will be done by an officer.
- 2.6 At no time during the site visit should Members debate or comment on the planning merits or otherwise of a proposal. The application will be debated in public at a subsequent planning committee meeting.
- 2.7 On occasion, it may be helpful to Members to view the site from a neighbouring property. This should only be done where consent has been obtained by officers from the landowner concerned and again, at no time should Members debate or comment on the planning merits of the proposal.
- 2.8 The role of the local division member at the site visit will be limited to drawing attention to features of the site and its surroundings that he/she considers relevant to the committee's understanding of the site, its surroundings and the proposal. The local member will not be permitted to make representations on the merits or otherwise of the application.

3. General

- 3.1 Members should avoid being separated; it is essential that they should not allow themselves to be lobbied at the site visit or enter into a debate about the application with any third party, including applicant, agent, supporters or objectors, as this could create a perception of bias.
- 3.2 Members should ensure that they have seen all aspects of the site suggested by the accompanying officer or the Chairman during the visit.
- 3.3 Members will not make any decision at the site visit and individual Members should keep an open mind about the merits or otherwise of the proposal to which the site visit relates.
- 3.4 The application will usually be the first item on the agenda of the following Planning Committee meeting where the decision will be made.

4. Record of the visit

- 4.1 A record of the visit will be retained on the planning application file. The record will include the timetable for the meeting, attendees and what matters were viewed on site.

5. Notes

- 5.1 Officers will identify relevant health and safety issues for all site visits. All health and safety instructions, as issued by the site owner/operator must be strictly followed.

5.2 Where appropriate, protective clothing e.g. visibility jackets, hard hats will be provided for Members on arrival at the site. Members should, however, be aware of the need to wear appropriate footwear.

5.3 In the interests of sustainability and highway safety, it is recommended that car-sharing opportunities be used where practical to minimise travelling and parking.