

HERTFORDSHIRE COUNTY COUNCIL CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS INVOLVED IN THE PLANNING PROCESS

Preamble

This is a local Code, which has been prepared in order to set out clearly the way in which the County Council will process the planning applications it determines. The Code applies to both councillors ("members") and officers who become involved in operating the planning system. It is important that both members and officers adhere to the Code; if they do not, planning decisions may be vulnerable to legal challenge and/or to a complaint to the Local Ombudsman.

1. Basic premises

- 1.1 The purpose of the planning system is to ensure that planning applications are determined in accordance with the law and relevant planning policies.
- 1.2 The County Council's Constitution sets out (in the Scheme of Delegation of Officers) those categories of application which may be determined by the Chief Executive, or by an officer nominated by the Chief Executive. Whether the decision is taken by the Committee or an officer, the decision maker must have regard only to material planning considerations and must disregard all irrelevant considerations.
- 1.3 If the planning system is to be successful it must ensure that all those involved (members and officers) act in a way which is not only fair but seen to be fair.
- 1.4 Members' overriding duty is to the whole County of Hertfordshire, and they should exercise their decision-making powers in that context. There is however no reason why a member of the Committee should not participate in a decision-making process simply because the application concerns their electoral division, provided they comply with the requirements of this Code.
- 1.5 All members are bound by the local Code of Conduct for Members which sets out general obligations and also imposes requirements to disclose interests. Members of the Committee must comply with the Code of Conduct when dealing with planning matters. Breach of the Code can have serious consequences for members and may also invalidate a decision. Section 10 sets out further guidance.

- 1.6 In addition to the requirements of the local Code of Conduct members of the Committee have a duty in law to avoid bias or the appearance of bias. Breach of this requirement may invalidate a decision. This issue is dealt with further in Section 3.
- 1.7 Unless they are acting in accordance with the Scheme of Delegation to Officers, or with a specific delegation of authority by the Committee, officers may only advise the Committee. No individual member, and no County Council body other than the full Council or the Committee, may issue instructions to officers on the planning process.
- 1.8 When advising members on planning issues, officers have a duty to give professional advice and must not be swayed by political considerations. This duty is reinforced by the Royal Town Planning Institute Code of Professional Conduct, which requires officers who are RTPI members not to make or subscribe to statements or reports which are contrary to their own professional opinions. Officers who are not RTPI members will also follow this requirement. Members must not put any pressure on officers to make a particular recommendation on a planning application.
- 1.9 Planning applications submitted by the County Council for its own development will be treated in the same way as those for private developers, both in terms of procedure and the assessment of material planning considerations.

2. Training

- 2.1 Basic training on the planning process will be made available at convenient times for all members of the County Council and in particular those serving on the Committee.
- 2.2 All members serving on the Committee including substitute members shall have undertaken at least basic training on the planning process prior to serving on the Committee.
- 2.3 Full training at convenient times for members of the Committee will be arranged within 3 months of any member being appointed to the Committee.
- 2.4 Refresher training for all members of the Committee will be held on an annual basis.

3. Avoidance of Bias

- 3.1 Members have a legal duty to avoid bias or the appearance of bias. Members must not do anything which indicates that they have made their mind up on an application before it comes before the Committee. The test is whether, from the point of view of the fair minded and well

informed observer, there was a real possibility that the member was biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant planning issues. If it can be shown that one or more members of the Committee failed this test in relation to a particular decision of the Committee, a complainant could successfully apply to the Court to quash it.

- 3.2 Section 25 of the Localism Act 2011 contains provision relating to pre-determination. The purpose of s25 as stated in the explanatory notes accompanying the 2011 Act is not to abolish the common law rules against pre-determination, but to clarify how it applies to councillors. The explanatory note goes on to say:

“Pre-determination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by Councillors later judged to have pre-determined views have been quashed. The section makes it clear that if a Councillor has given a view on an issue, this does not show that the Councillor has a closed mind on that issue, so that if a Councillor has campaigned on an issue or made public statements about their approach to an item of Council business, he or she will be able to participate in discussion of an issue in the Council, and to vote on it if it arises in an item of Council business requiring a decision”

The Guidance in Sections 4, 5 and 6 of this Code aims to help members avoid the problem of pre-determination.

4. Pre-Application / Post-Submission Discussions

- 4.1 Members of the Committee must preserve their impartiality as decision-makers and not normally take part in pre-application or post-submission discussions with developers or other interested parties regarding development proposals.
- 4.2 In those exceptional circumstances where members do attend such meetings, they should be structured, with an officer always in attendance and a note taken of the meeting. Where possible, meetings should ensure that representatives of both proposers and objectors should be allowed to present their views through structured meetings.
- 4.3 It must always be made clear at the outset that the discussions will not bind the Council to making a particular decision.

5. Site Visits

- 5.1 Formal site visits will be held where there is a clearly identified benefit from holding one, and a record will be kept of why visits are being held and who attended. This will usually be when a proposal is contentious or particularly complex, and the impact is difficult to visualise or assess from the submitted information and plans.

- 5.2 The need for a site visit will be determined by the Committee Spokesmen in advance of the proposal being considered by the Committee.
- 5.3 All members of the Committee will be invited to attend the site visit, together with the local member(s). Where a proposal would have a significant impact on an adjoining division or divisions the adjoining local member(s) will also be invited.
- 5.4 All site visits must include an officer.
- 5.5 If access to private land is necessary, then officers will secure the prior agreement of the landowner / operator. Once on the site, then the landowner / operator / applicant will be advised that only factual answers or information should be given and that lobbying will be unacceptable.
- 5.6 The relevant district and parish councils will be notified of any site visits, and invited to attend (subject to the landowner's agreement).

6. Lobbying

- 6.1 All members of the Committee must avoid expressing an opinion which may be taken as indicating that they have reached a conclusion or otherwise committing the authority on a planning application until all the relevant information, evidence and arguments have been put before them at a meeting of the Committee. This includes expressions of opinion in private, in public, to the Press and in any council meeting.
- 6.2 Local members who are also members of the Committee are free to participate in the decision making, provided they have abided by the provisions of this Code of Practice.
- 6.3 Any member of the Committee who wishes to express publicly a final view on a planning application prior to the Committee meeting at which a decision is to be taken must not take any part in and must withdraw from the room while it is under consideration.
- 6.4 Members of the Committee must not organise support or opposition for a proposal or lobby other members.

7. Officer Reports to Committee

- 7.1 The Committee papers will normally be available at least 7 working days prior to the meeting.
- 7.2 All applications submitted to the Committee for consideration will have a full written report from officers including a reasoned assessment of the proposal and a justified recommendation.
- 7.3 Any oral presentations raising new matters and updates by the officers to the Committee will be fully minuted.

- 7.4 In accordance with County Council policy all reports will refer to the financial implications arising from the report, although this will not be a material planning consideration in determining the application.
- 7.5 Where an application is refused in accordance with the officer recommendations, then the reasons for refusal will be as set out in the officer report.
- 7.6 Where the Committee is minded to grant or refuse an application contrary to the officer recommendations, a final decision on the application can be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that clear and relevant reasons can be given, based on material planning considerations.
- 7.7 Applications which are granted or refused contrary to officer recommendations shall be supported by clear and convincing reasons for refusal, taking into account material planning considerations.
- 7.8 All reasons for grant or refusal of applications determined contrary to officer recommendations will be minuted in full.

8. Presentations by interested parties to the Committee

- (1) Applicants and objectors will have the opportunity to address the Committee in respect of any application before them. Prospective speakers shall give 7 days notice that such a presentation is to be made and shall then submit a supporting paper outlining the main points of the presentation at least 2 full working days prior to the meeting, to enable the points they wish to raise to be fully considered. There shall be at least one presentation supporting the application and one presentation opposing the application, unless no such persons wish to attend. The number and length of presentations to the Committee shall be as set out in Standing order C.11 (2) below.
- (2) The maximum number of presentations and the time allowed for each presentation shall be:

Planning applications:

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|------------------------------|---------------------------------------------------------------------------|
| Opposing the application - | 2 speakers at up to 5 minutes each |
| Supporting the application - | up to 5 minutes and/or the same cumulative time as notified for objectors |

Planning applications with Environmental Impact Assessment Development:

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|----------------------------|------------------------------------|
| Opposing the application - | 4 speakers at up to 5 minutes each |
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Supporting the application - up to 5 minutes and/or the same cumulative time as notified for objectors

Provided that the Chairman in consultation with the Opposition Spokesmen can exercise his/her discretion to allow an increase in the numbers and time allowed for presentations in relation to specific large scale applications.

Village Green Applications:

Where the matter has been heard at a non-statutory public inquiry and is then referred to the Development Control Committee, the applicant or other parties will be given the opportunity to address the Committee for up to 5 minutes each.

Where the matter has not been heard at a non-statutory public inquiry and the oral representations procedure has been requested, the applicant and/or any person who falls within Regulation 28(7)(b) of the Commons Registration (England) Regulations 2008 will have the opportunity to make oral representations before the Committee up to a maximum of 30 minutes.

- (3) There shall also be an opportunity for any member of the public being resident in or a registered local government elector of Hertfordshire to present a petition relating to a matter with which the Committee are concerned, containing 100 or more signatures of residents or business ratepayers of Hertfordshire. The person named in the notification referred to below may then address the Committee for no more than three minutes on the subject of the petition, but thereafter shall not have the right to speak further. If the subject matter of the petition is not the subject of a report on the agenda of the meeting concerned, the petition will be referred to the next appropriate meeting, or to officers for consideration and report to the local member and Group Spokesmen.
- (4) Notification of intent to present a petition must be given in writing to the Chief Legal Officer at least 5 clear days before the meeting where an item relating to the subject matter of the petition does not appear on the agenda for the meeting and at least three clear days before where the item is the subject of a report.
- (5) Not more than two petitions shall be presented at any one meeting of the Committee unless the Chairman so allows.

9. Conduct at the Committee

- 9.1 Members of the Committee must be free to vote as they consider appropriate on planning matters. Whilst members are free to discuss

their opinions on planning applications at political group meetings, decisions must not be made on how to vote on issues prior to the Committee meeting.

10. The Local Code of Conduct for Members and Declarations of Interest.

- 10.1 The local Code of Conduct for Members adopted by the County Council requires that members shall conduct themselves at all times in accordance with the obligations set out in the Code.
- 10.2 One of the obligations is not to confer an improper advantage on any person. Members should not therefore use their position to discuss with officers a planning application from a person or body with whom they have a connection when other members of the public would not have the opportunity to do so.
- 10.3 The local Code sets out the legal requirements for members on declaring Disclosable Pecuniary Interests and also contains provisions on disclosing other interests. These must be followed scrupulously and members should review their situation regularly. When doing so it must be borne in mind that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each member. Members who have any doubts about whether they might have an interest in an item should seek advice from the Chief Legal Officer before the meeting.
- 10.4 Disclosable Pecuniary Interests: Disclosable Pecuniary Interests are specified by the Secretary of State and those that have been specified as at 1 July 2012 are set out in the local Code of Conduct. If a member is present at a meeting when an item in which they have a Disclosable Pecuniary Interest is being considered, they must declare their interest and not participate in or vote on the matter.
- 10.5 Other Interests: If members are present at a meeting when an item in which they have an interest as defined in paragraph 4 of the local Code of Conduct is being considered, they must declare their interest but shall be entitled to take part in any discussion and the decision taking process.
- 10.6 The local Code sets out the requirement for members to register financial and other interests in the Register maintained for that purpose by the Chief Legal Officer. An interest which appears on the Register must still be declared at the meeting if it is relevant to the item under discussion.
- 10.7 It is not possible to give a definitive list of situations where a member may have an interest. It is clear however that if a planning application affects in any way the property of a member (or of a friend, relative or employer) then the member will almost certainly have an interest in the

item and if it relates to themselves or their spouse or civil partner or a person with whom they are living as husband or wife or as civil partners then it will be a Disclosable Pecuniary Interest.

- 10.8 Where a planning application or item of business before the Development Control Committee relates to a matter which has previously been considered by a district council or parish council on which members of the Development Control Committee also serve, those members may have a prejudicial interest under the local Code of Conduct for Members. Those members will be entitled under the local Code of Conduct to remain, speak and vote provided they have declared their interest and provided their interest at district/parish level has not been such as to indicate that their view on the application has been predetermined. Such members may however choose in any particular case to withdraw because they feel their interest is so significant. Such members must have scrupulously avoided forming a fixed view on the issue in advance of Committee. If, for example, a member was on the district council's planning committee which considered the application and came to a view on it, then that member should not participate in respect of that application at the Development Control Committee.

11. Delegations

- 11.1 Any planning applications submitted by a member or officer of the County Council in a personal capacity will be considered by the Committee, irrespective of whether it conforms to policy or is uncontentious, and the member or officer will take no part in the processing of the application.
- 11.2 Any such applications will be recorded by the Chief Legal Officer as the County Council's Monitoring Officer, who will confirm within the report to the Committee that the application has been processed normally.
- 11.3 Other planning applications will be considered by the Committee where they fall within the categories set out in the County Council's guidance for determining planning applications under delegated authority. A copy of the guidance is appended to this Code of Practice.

12. Availability of information relating to planning applications

- 12.1 Neighbourhood notification of planning applications will be carried out in accordance with the County Council's code of practice relating to consultations on planning applications.
- 12.2 All letters notifying local residents of planning applications will be accompanied by information on how to make their views known to the County Council, including information about making presentations to the Committee.

- 12.3 The local member will be informed of all planning applications that fall to the County Council to be determined as soon as practicable following receipt of the application.
- 12.4 Letters of objection and support will be made available for public inspection during office hours, subject to 24 hours notice.
- 12.5 Copies of planning applications, subsequent amendments, relevant correspondence from consultees, planning decisions, conditions or reasons for refusal and Section 106 Agreements will be made available for public inspection at County Hall during office hours, subject to 24 hours notice.
- 12.6 Copies of planning applications will also be available for inspection at the relevant district or borough council, and where practicable at the local parish or town council. Details of these locations will be given in the neighbour notification letter.

13. Monitoring Development

- 13.1 Periodic site visits will be conducted to enable members of the Committee to monitor the quality of planning permissions granted (a minimum of 3 visits per annum), to include a range of waste management facilities, a working quarry and the County Council's own development.
- 13.2 For each site visited for monitoring purposes a briefing note will be prepared.
- 13.3 Attendance at review visits will be restricted to members of the Committee and the local member(s).

14. Planning Gain

- 14.1 Officers will negotiate with developers with regard to Legal Agreements, in consultation with the local member.
- 14.2 Reports to Committee will include the Heads of Terms for the Agreements.
- 14.3 Copies of any concluded Legal Agreements will be available for public inspection both at County Hall, and in conjunction with the statutory register unless there is a need to respect confidential or commercial information.
- 14.4 Copies of Legal Agreements will also be forwarded to the local parish council together with the decision notice for the application.

**End
July 2012**

APPENDIX

Guidance for Determining Planning Applications under Delegated Authority

The Chief Executive will determine all planning applications for county matter and County Council development, and approve matters reserved for the subsequent approval of the County Council except in the following instances.

- ◆ where the application is recommended for approval but the proposed development would be a major departure from the provisions of the development plan;
- ◆ where the local member requests in writing within 21 days of circulation of the details of the application or within 7 days of being notified that it is intended that the decision will be determined under delegated powers that the application be considered by the Development Control Committee, and two of the three Committee Spokespersons give their agreement;
- ◆ where the application is the subject of a material planning objection from the relevant district/borough council(s);
- ◆ where the application is the subject of a material planning objection from the relevant parish council(s);
- ◆ where the application is of significant public interest, or is controversial in the opinion of the Director;
- ◆ where the application is accompanied by an Environmental Statement in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Provisions 1999;
- ◆ where the application is submitted on a personal basis by or on behalf of a Councillor of the authority (or their spouse/partner) or by any member of the Council's staff (or their spouse/partner);
- ◆ those applications which for any reason the Director considers should be presented to the Development Control Committee for decision. In such cases, the reasons for bringing the application before the Committee will be set out in the report.

Note: Whenever the Scheme of Delegations to Officers is amended, any revisions affecting the determination of planning applications will apply to this Code of Practice.