

**ANNEX 23 - HERTFORDSHIRE COUNTY COUNCIL**  
**CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS INVOLVED IN**  
**THE PLANNING PROCESS**

**Preamble**

This is a local Code (“the Planning 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 Planning Code applies to both Councillors and officers who become involved in operating the planning system. It is important that both Councillors and officers adhere to the Planning Code; if they do not, planning decisions may be vulnerable to legal challenge and/or to a successful complaint to the Local Government and Social Care Ombudsman.

**1. Basic premises**

- 1.1 The purpose of the planning system is to contribute to the achievement of sustainable development. Part of this 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 to Officers) those categories of application which may be determined by officers. Whether the decision is taken by the Development Control Committee (“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 (Councillors and officers) act in a way which is not only fair but seen to be fair.
- 1.4 Councillors’ 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 the Planning Code.
- 1.5 All Councillors are bound by the County Council’s Code of Conduct for Members (“the Code of Conduct”) 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 of Conduct can have serious consequences for Councillors and may also invalidate a decision. Section 10 sets out further guidance.

- 1.6 In addition to the requirements of the 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 have no power to take decisions and may only advise the Committee. No individual Councillor, 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 Councillors 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 (“RTPI”) 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. Councillors 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 All Councillors appointed to serve on the Committee, including substitutes, are required to undertake training on the planning process (with particular emphasis on determining planning applications) on first being appointed. Such training will be arranged within 3 months of any councillor being appointed to the Committee and a councillor must undertake this training before first sitting as a member of the Committee.
- 2.2 Refresher training will be held on an annual basis and all members of the Committee (and substitutes) are required to attend such training.

## **3. Avoidance of Bias**

- 3.1 Councillors have a legal duty to avoid bias or the appearance of bias. Councillors 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 councillor 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 (“the 2011 Act”) contains provisions relating to pre-determination. The purpose of Section 25 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 the Planning Code aims to help Councillors 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 Councillors 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 Chairman of the Committee in consultation with the Team Leader Development

Management in advance of the proposal being considered by the Committee and may be recommended by officers.

- 5.3 All members of the Committee will be invited to attend the site visit, together with the Councillor representing the electoral division in which the site is situated (“the Local Councillor”). Where a proposal would have a significant impact on another electoral division the Local Councillor(s) for that/those other electoral division(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 “a closed mind” on a planning application or making any statement which could be regarded as 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 an expression of such an opinion, or statement, in private, in public, to the Press and in any Council meeting.
- 6.2 Local Councillors who are also members of the Committee are free to participate in the decision making process, provided they have complied with the provisions of Planning Code and the Code of Conduct.
- 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 Councillors.

## **7. Officer Reports to Committee**

- 7.1 The Committee papers will normally be available at least 5 clear 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 Reports will refer to the financial implications arising from the report only if these are material planning considerations in determining the application.
- 7.5 Where an application is refused or granted in accordance with the officer recommendations, then the reasons for refusal or grant as set out in the officer report, together with any further reasons raised at the Committee meeting, will be fully minuted.
- 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. Reasons for grant or refusal in such cases will be provided by Councillors and while officers may convert any reasons given into appropriate planning terminology, officers will not and must not be requested to provide reasons against their professional judgement where they have not recommended grant or refusal (as the case may be).
- 7.7 Applications which are granted or refused contrary to officer recommendations shall be supported by clear and cogent 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**

- 8.1 Presentations by interested parties are governed by the provisions of Standing Order C.11 of the County Council's Standing Orders for Regulatory and Other Committees in Annex 12 to the Constitution, which provides:
- (2) Applicants and objectors will have the opportunity to address the Committee in respect of any application before them. Prospective speakers shall give 4 working 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 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 (3) below.*

- (3) *The maximum number of presentations and the time allowed for each presentation shall be:*

***Planning applications:***

*Opposing the application - 2 speakers at up to 5 minutes each*

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

***Planning applications with Environmental Impact Assessment Development***

*Opposing the application - 4 speakers at up to 5 minutes each*

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

*Provided that the Chairman in consultation with the Political Group 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:***

- (4) *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.*
- (5) *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.*

***All Applications - Petitions:***

- (6) *There shall also be an opportunity for any member of the public being resident or working in Hertfordshire to present a petition containing 100 or more signatures of residents or persons working in Hertfordshire and relating to a matter with which the Committee are concerned. The person named in the notification referred to in Standing Order C.11(7) below may then address the Committee for no more than 5 minutes on the subject of the petition, but 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 for the meeting the petition will be referred to the next appropriate meeting, or to officers for consideration and report to the Local Councillor and Political Group Spokesmen.*

*(7) Notification of intent to present a petition must be given in writing to the Director of Law & Governance 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 3 clear days before where the item is the subject of a report.*

*(8) No more than 2 petitions shall be presented at any meeting of the Committee unless the Chairman otherwise determines.*

8.2 The procedure for hearing presentations to the Committee will (unless the Chairman otherwise decides in relation to any particular application) be for the Chairman to invite the presenting planning officer to outline the application and committee report first, followed by the objectors, then by the supporters and then by the Local Councillor(s).

8.3 A person making a presentation to the Committee should be prepared to answer questions by members of the Committee following their presentation.

## **9. Conduct at the Committee**

9.1 Members of the Committee must be free to vote as they consider appropriate on the planning merits of any matter before the Committee. Whilst Councillors 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 and members of the Committee should not be subject to a party whip when considering planning applications.

## **10. The Code of Conduct and Declarations of Interest.**

10.1 The Code of Conduct requires that Councillors shall conduct themselves at all times in accordance with the obligations set out in the Code of Conduct.

10.2 One of the obligations is not improperly to confer an advantage or disadvantage on any person. Councillors 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 members of the public would not have the opportunity to do so.

10.3 Chapter 7 of Part 1 of the 2011 Act and the Code of Conduct set out the legal requirements for Councillors on declaring Disclosable

Pecuniary Interests and the Code of Conduct contains provisions on disclosing other interests. These provisions must be followed scrupulously and Councillors 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 Councillor. Councillors who have any doubts about whether they might have an interest in an item should seek advice from the Director of Law & Governance or the Committee's legal advisor before the meeting.

- 10.4 Disclosable Pecuniary Interests: Disclosable Pecuniary Interests are specified in statutory Regulations (the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012) and are set out in the Appendix to the Code of Conduct. If a Councillor is present at a meeting of the Committee when an item in which they have a Disclosable Pecuniary Interest is being considered, they must declare their interest and not participate in discussion of or vote on the matter.
- 10.5 Other Interests: If Councillors are present at a meeting when an item is being considered in which they have an interest as defined in paragraph 5 of the Code of Conduct (a 'Declarable Interest'), they must declare their interest. It is for each Councillor who has a Declarable Interest to consider whether they should participate in consideration of the item. A Councillor with a Declarable Interest would not normally be prevented from participating in the debate or voting on the item concerned unless their interest was so significant in the context of the item as a whole that it might affect their ability to judge the public interest objectively.
- 10.6 Chapter 7 of Part 1 of the 2011 Act and the Code of Conduct set out the requirement for Councillors to register financial and other interests in the Register maintained for that purpose by the Director of Law & Governance. 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 Councillor may have an interest. It is clear, however, that if a planning application in any way affects the property of a Councillor (or of a friend, relative or employer) then the Councillor will almost certainly have an interest in the item. An interest within the specified categories of Disclosable Pecuniary Interest will be regarded as the Councillor's interest if it is an interest of their spouse or civil partner or a person with whom they are living as husband or wife or as civil partners and the Councillor is aware of the interest.
- 10.8 Where a planning application or item of business before the Committee relates to a matter which has previously been considered by a district Council or parish Council on which a Councillor also serves, that Councillor may have an interest under the Code of Conduct. That



Councillor will be entitled under the Code of Conduct to speak and vote provided the Councillor has declared their interest and provided their involvement at district/parish level has not been such as to indicate that their view on the application has been predetermined (see Section 3 above). A Councillor may, however, choose in any particular case to withdraw because they feel their involvement at district/parish level has been so significant that they could not, or might be perceived as being unable to, consider the matter before the Committee fairly.

## **11. Delegations**

- 11.1 Any planning application submitted by a Councillor 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 or could otherwise have been dealt with by officers under delegated powers, and the Councillor or officer will take no part in the processing of the application.
- 11.2 Any such application will be recorded by the Director of Law & Governance as the County Council's Monitoring Officer, who will confirm within the report to the Committee that the application has been processed in accordance with normal procedures.
- 11.3 Any other planning application will be determined by the Executive Director of Sustainable Growth unless the application falls within any of the categories set out in the County Council's Guidance for Determining Planning Applications under Delegated Authority as set out in the Appendix to the Planning Code.

## **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 The Local Councillor 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.
- 12.3 Letters of objection and support will be made available for public inspection during office hours.
- 12.4 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 and on the County Council's website.

## **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 year), 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 Councillor(s).

#### **14. Planning Gain**

- 14.1 Officers will negotiate with developers with regard to legal agreements, in consultation with the Local Councillor(s).
- 14.2 Reports to the 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 register, subject to the exclusion of information that is commercially confidential.
- 14.4 Copies of legal agreements will also be forwarded to the local parish council together with the decision notice for the application.

## APPENDIX

### Guidance for Determining Planning Applications under Delegated Authority

For applications in respect of Village Greens, Commons or Rights of Way, the Executive Director for Environment and Transport (the “EDE&T”) will determine and approve matters reserved for the subsequent approval of the County Council except in the following instances:

- ◆ where the local Councillor requests in writing within 21 days of circulation of the details of the application or within 5 working days of being notified that it is intended that the decision will be determined under delegated powers that the application be considered by the 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, in the opinion of the EDE&T, the application is of significant public interest, or is controversial;
- ◆ where the application is submitted or objected to on a personal basis by or on behalf of a Councillor (or their spouse/partner) or officer (or their spouse/partner);
- ◆ an application which, for any reason, the EDE&T considers should be presented to the Committee for decision. In such cases, the reasons for bringing the application before the Committee will be set out in the report.

For all other planning applications for county matters and County Council development, the Executive Director of Sustainable Growth (the “EDSG”) will determine 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 Councillor requests in writing within 21 days of circulation of the details of the application or within 5 working days of being notified that it is intended that the decision will be determined under delegated powers that the application be considered by the 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, in the opinion of the EDSG, the application is of significant public interest, or is controversial;
- ◆ 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 (or their spouse/partner) or officer (or their spouse/partner);
- ◆ an application which, for any reason, the EDSG considers should be presented to the 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 Planning Code.