

# HEREFORDSHIRE COUNCIL CODE OF CONDUCT FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS

This Code supplements the Code of Conduct for Members adopted by the Council under Section 51 of the Local Government Act 2000. The obligations and responsibilities of this Code apply to all Members of planning committees. In this Code “committee” means area planning sub-committees as well as planning committees.

The Council’s planning policies are adopted in the public interest for the benefit of the whole community rather than for any particular individual or interest group. Decisions are required to be taken in accordance with the current development plan and having regard to other material considerations. Each planning application is considered on its merits. However, planning decisions by their very nature are often contentious, with strong contrary views being expressed. Any decision can be the subject of detailed scrutiny or challenge. Failure to follow the requirements of this Code may result in sanctions under the general Code of Conduct for Members, or may be regarded by the Local Government Ombudsman as incompatible with good administration.

This code covers the conduct of both Councillors and Officers. It relates to the whole of the planning process, including policy formulation and development control, and all Councillors and Officers who come into contact with it. The code is designed to promote greater mutual support and understanding between Members and Officers to the benefit of all involved in the planning process. It is also designed to give the public greater confidence that Herefordshire Council intends to carry out its planning responsibilities fairly and openly.

This code is set out in the form of a series of headings with a brief outline of the issues involved, followed by practical advice.

## The Role of Councillors

1. In making decisions on planning applications, **You will**:
  - **act fairly and openly**
  - **approach each application with an open mind**
  - **carefully weigh up all the material planning considerations**
  - **avoid inappropriate contact with interested parties**
  - **ensure that valid reasons for decisions are clearly stated.**
2. **You will** be free to vote on planning applications as you consider appropriate (that is, without a Party 'whip'), deciding them in the light of all the relevant information, evidence and arguments. In accordance with the requirements of the Town and Country Planning Act, **you will** base your decisions on the provisions of the relevant Development Plan (and Unitary Development Plan once adopted) and all material planning considerations.
3. **You may not** give instructions to Officers nor may you place pressure on Officers in order to secure a particular recommendation on an application.
4. **You will not** use your position improperly to confer or secure for yourself, or for any other person, an advantage or disadvantage.

## Discussions with Applicants

5. Local authorities are encouraged by the Audit Commission, the Local Government Association and the National Planning Forum to enter into pre-application discussions with potential applicants. In addition, negotiations and discussions are likely to continue after an application has been submitted. Such discussions can often be interpreted by the public, and especially by objectors, as prejudicing the planning decision-making process. To avoid this, application discussions should take place within the guidelines below.
6. **Pre-application meetings** with prospective applicants are encouraged, but, to avoid misunderstandings, they require a degree of formality. They **will normally only involve Officers**, except where the Head of Planning Services, in consultation with the Chairman of the relevant Planning Committee, has agreed that a pre-application meeting shall include Members along with an appropriate senior Planning Officer.
7. It will be made clear at pre-application meetings that:
  - Officers' initial views and advice are given on a without prejudice basis which will be consistent with the provisions of the current Development Plan and other adopted Council policy
  - no decisions may be made or advice given which would bind or otherwise compromise the relevant Planning Committee of the Council (or the Head of Planning Services if delegated to make the decision)
8. Where pre-application meetings involve a Member, a note of the discussion will be taken by the Planning Officer and will be made available for public inspection, subject to the usual rules about access to information, if and when an application is submitted. At least one appropriate Planning Officer will be present at all such meetings.
9. **You may, following discussion with the appropriate planning officer, and in consultation with the relevant Chairman, take part in organised post-submission meetings with applicants or other parties.** A note of any discussions will be taken and will be made available for public inspection, subject to the usual rules about access to information. At least one Planning Officer will be present at all such meetings.

## Lobbying

10. Lobbying or seeking to influence a decision is a normal and perfectly proper part of the political process. However, it can lead to impartiality being called into question and the need to declare publicly that an approach of this nature has taken place. Problems could arise if Councillors indicate or give the impression of support or opposition to a development proposal or particular planning application, or declare their voting intention to anyone, before a decision is to be taken. To do so without all the relevant information and views would be unfair and would prejudice the impartiality of the decision making process. It may also mean that a Councillor is open to an accusation of predetermination or bias (which can give rise to a judicial review of a planning committee's decision); or it may limit the Councillor's ability to take part in further proceedings (see especially paragraphs 29 and 37 below).

11. Lobbying can take place by way of an approach to you, by telephone, or on a chance meeting, or by way of a request to see all or some of the Members of the Planning Committee. It is an essential part of the democratic process that members of the public should be able to make their views known to you. However, to avoid compromising your position before you have received all the relevant information, evidence and arguments, **you will:**
- **avoid discussing with an applicant or any other person your thoughts about the merits of a planning application or proposed development**
  - **not make it known in advance of the consideration of the application by Committee whether you support or oppose a proposal unless you accept that this will mean that you may not take part in the decision (see paragraph 12 below)**
  - **restrict your response to giving procedural advice, and make it clear that that is all you are prepared and allowed to do**
  - **direct lobbyists or objectors to the case officer, and**
  - **advise the Head of Planning Services as soon as possible of the existence of any substantial or abnormal lobbying activity.**
12. **If you express publicly a final view on an application** prior to the meeting of the Committee of which you are a Member at which a decision is to be taken, **you will create a prejudicial interest, and your further participation will be limited as set out in paragraph 29 below.** Public expression of a view would include, for example, making a statement to the press of your firm attitude to an application, or in any document to be made publicly available, at a meeting of the Council or a Town or Parish Council (or one of their Committees), or in any situation where the view expressed might reasonably be expected to gain wider circulation.

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## Site Visits

14. Site Inspections by a Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to the decision. This is true particularly when the issues concern, for example, visual impact, the character of an historic building or the effect of development on local amenity. However, site inspections are costly, cause delay to decisions and are an unsuitable place for holding a reasoned debate.

The criteria for holding site inspections are:

- the character or appearance of the development itself is a fundamental planning consideration;
  - a judgement is required on visual impact;
  - the setting and surroundings are fundamental to the determination or to the conditions being considered.
15. They should not be held when inspection of the site is irrelevant to the material conditions. Any Member of the Committee may request a site visit, but reasons based on the above criteria must be stated, and will be minuted. Site visits will not be agreed to lightly; a majority vote will decide. Only members of the Area

Committee and the Planning Committee may take part, together with supporting officers. Third parties, including the applicant or agent, will be allowed to attend, but not take part. A decision to inspect a site must be arrived at during the consideration of the application at the Planning Committee meeting.

16. If access to private land is necessary for a site visit by you, officers will secure the prior agreement of the landowner, explaining that you will not hear argument from any interested party while at the site.
17. Where a site visit has been agreed by the relevant Committee, as a member of the Committee and particularly in cases where you have requested a site visit personally you should attend, accompanied by appropriate officers.
18. **The purpose of the site visit is fact finding.** Officers will be able to point out relevant features of the site and surroundings. You will be able to see the physical features of the site and ask questions through the Chairman or the officers to seek clarification.
19. **No discussion of the merits of the case must be permitted and all questions from you will be put through the Chairman.**
20. The visiting party will stay together as a group. No lobbying by applicants or objectors who might be present will be allowed. If an applicant or group persists in attempting to lobby, the party and Officers will leave the site and the site visit will be abandoned.
21. As a member of the relevant Planning Committee when on site visits you should not make any comments that could create an impression that you had already formed a view on the merits of the application. No decision on the application should be made until the formal meeting of the Planning Committee at which the application is to be considered, when they will have before them all necessary information to be able to make an informed decision, including a record of the site visit.
22. Conduct of Visits
  - Visits will be conducted in a formal manner.
  - The Chairman or Vice-Chairman will open the meeting, and remind members of its purpose and conduct.
  - Officers will highlight issues **relevant to site inspection**. If issues are raised which necessitate consultation with the applicant or his agent, this should be done after the close of the meeting and the outcome reported to the subsequent committee.
  - Local Ward Members will be asked to highlight local issues relevant to the site inspection.
  - The Chairman or Vice-Chairman will close the meeting.
23. General Matters
  - There will be **no** debate about the merits of the application and no decision will be made.

- No formal notes will be made; an officer will orally update the Committee on any new findings or further developments when it next meets to consider the application.
  - **No** hospitality will be accepted.
24. **If you find it necessary to visit a site alone (perhaps because it was not possible for you to attend a Committee visit), you should view the site only from public vantage points, seek to avoid any discussion with interested parties, and, if there is such discussion, make it clear that no decision on the application will be taken until it has been discussed at Committee.**

## Material Submitted to Committee

25. If you receive material from or on behalf of an applicant or third party in connection with an application before a Committee you should establish from the Planning Officers whether the material has been received by them. If it has not, you should make it available as soon as possible to the Planning Service.
26. Documents in connection with an application should all be dealt with in the officer's report to Committee. Any additional information received after the preparation of that report up to 17.00 hrs on the day before the Committee meeting will also be brought to the attention of the Committee if it raises new and relevant material planning matters. Papers received after that time will normally be discounted, since time will not be available to check their accuracy or to give consideration to their implications.

## Declaration of Interests at Committee

27. **You should declare any interests in applications coming before the Planning Committee at the start of the meeting.** In order to be able to do that, you should seek early advice from officers, including the Monitoring Officer, if you are in any doubt whatsoever. However, if for some reason it is not possible for an interest to be declared by yourself at the outset of a meeting, or if it becomes clear at a later stage during the meeting that you have an interest in an item under discussion, then you must declare that interest at the first opportunity.
28. When declaring an interest, you must specify the nature of the interest, and whether it is personal or prejudicial. The minutes of the meeting must record what type of declaration was made.
- A **personal interest** exists where a decision on the matter at hand could reasonably be regarded as affecting your well being or financial position of a relevant person you, your employer, family or close friends to a greater extent than other people in the area affected by the decision. If it does you must **say** you have a personal interest but can **stay** and take part and vote in the meeting.
  - A **prejudicial interest** exists where a member of the public (who has knowledge of the relevant facts) would reasonably regard your personal interest as being so significant that it is likely to prejudice your judgement of the public interest.
29. **If you declare a prejudicial interest**, then under paragraph 12(2) of the Members' Code of Conduct (Appendix 12 of the Constitution), you may attend a Planning Committee meeting but only for the purposes of making representations, **provided** that the public are also allowed to attend the meeting for the same purpose. You must declare the nature of your interest at the start of the meeting. If you have such

an interest you should notify the Head of Legal and Democratic Services before the meeting that you wish to speak.

30. The procedure in Committee will be as follows. The Planning Officer will present the report. If you want to make representations, you take your place in the space allocated to public participation. You may make representations for no longer than three minutes (the time allocated to public participants at planning committee). Thereafter, you may take no further part in the debate or decision-making of the planning committee, and must immediately leave the meeting. You may not stay in the meeting or listen to any other public participation in respect of the application.
31. Withdrawal from the meeting involves physically leaving the meeting room. Moving to the public gallery is not sufficient. The Chairman of the Committee should suspend the proceedings of the Committee briefly while you leave the Committee room.
32. Where you have a dispensation granted by any appropriate person or body allowing you to speak and/or vote on a matter in respect of which a prejudicial interest has been declared, that dispensation applies also to this Code.

## **Cabinet Members**

33. There will be occasions when a Cabinet Member will wish to press for a particular development. This may include where the Council is the applicant. In those circumstances where the Cabinet Member is clearly so committed to a particular development, that it would not be possible to demonstrate an ability to take account of counter-argument before a final decision is reached then **he or she may speak at the relevant Planning Committee meeting to argue for the development but must then withdraw from the meeting while the application is discussed and determined.**
34. Where the Cabinet Member also has a ward representation role, he or she may also speak as local member.

## **Planning Committee Members who serve on Parish and Town Councils**

35. Some Councillors will be Members of Parish or Town Councils as well as Herefordshire Councillors. This situation can present problems where the Parish or Town Council is consulted on planning applications. The comments of the Parish Council should concentrate on local issues, but this is often the stage when Herefordshire Councillors come under pressure to indicate their support for or objection to a particular proposal. Of particular concern is the potential for a conflict of interest arising when a Member of both Councils votes on an application at a Parish or Town meeting before the Planning Committee meeting. A Councillor in this position could end up voting in the opposite way when all the relevant information is made available in the Planning Officer's report.
36. In order to avoid this potential conflict, **it is better that you do not serve on Parish or Town Council's planning committees.** If you cannot avoid that, you should not vote or say anything, which would create the impression that you have already made up your minds before to the Herefordshire Council planning meeting. In this way you will avoid being part of the formal process of submitting representations on planning applications to the Council, and so demonstrate your impartiality.

37. If this is unavoidable then you should indicate to the meeting **and request the Clerk to record in the minutes** that you vote based on the limited information available to the Parish/Town Council, and that your view change; and that if the matter comes before a planning committee of the Council you will approach it with an open mind, having regard to any Council policies, the Planning Officer's report, representations from the applicant and/or objectors and the views of other Councillors on the Committee. Those Members who have indicated a definitive view on an application or have voted without the matter being recorded as above should then proceed on the basis that they have a prejudicial interest.

## **Voting at Committee**

38. **You should vote on an application before a Committee only if you have been present for the whole of the presentation of and discussion on the application.**

## **Non Members of Planning Committee Attending Meetings**

39. You may attend meetings of the Council's Planning Committees even if you are not a member of that Committee unless you have a prejudicial interest. **You may speak but not vote on items under the procedures laid down in the Constitution unless under paragraphs 29 and 30 above.** When you attend any Planning Committee, you should not sit in the public gallery, but in the place reserved in the Committee room for Members of the Council who are not Members of the Planning Committee. When you speak at the meeting, either the Chairman of the Committee in calling upon you to speak or you in speaking should make it clear upon what basis you are taking part in the meeting, and that you have no right to vote on the application concerned. The rules on declaring interests set out at paragraphs 27-30 of this Code apply at all times.

## **Decisions Contrary to Officer Recommendations or to Development Plan Policies**

40. From time to time, there will be occasions when you or the Committee of which you are a member disagree with the professional advice on an application given by the Head of Planning Services. In such cases the reasons for differing from the professional advice received should be specified in the resolution of the Committee, along with the reasons for refusing an application recommended for approval or the conditions to be imposed on any approval in a case recommended by officers for refusal. The same provisions apply to decisions taken contrary to Development Plan policies. These cases will be referred to the Head of Planning Services for consideration as to whether the decision on the application in question should be referred to the main Planning Committee for determination in accordance with the Council's Constitution.

## **Applications in which a Member of the Council has an interest**

41. All applications which are submitted by or on behalf of you as a Member of the Council in your private capacity or by a relative or your partner (a "relevant person" as defined in paragraph 8(2) of the Code of Conduct for Members) must be drawn to the attention of the Head of Planning Services by yourself in writing, and will be reported to the Planning Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to Officers.

42. **You must take no part in the determination of the application. You must declare a prejudicial interest and leave the meeting and not seek to influence any decision made. You may, however, appoint an agent who can speak subject to Standing Order 5.11 (Public Speaking at meetings of Planning Committees and Area Planning Sub-Committees) on your behalf.**
43. If an application is submitted by your relative or partner (as defined in paragraph 8(2) of the Code of Conduct for Members), the applicant may speak at committee meetings (subject to Standing order 5.11 (Public Speaking at Meetings of Planning Committees and Area Planning Sub-Committees) or appoint an agent to speak on his or her behalf.
44. The Chairman of the Planning Committee which will determine the planning application in which you have an interest will appoint another Member of the Council to provide procedural and other advice and information to the applicant, and to the Town or Parish Council concerned.

## Hospitality

45. As a Member of the Council **you are discouraged from receiving hospitality from people with an interest in a planning proposal.** If receipt of hospitality is unavoidable, you will ensure that it is of the minimum level and, if it exceeds the level to which the Code of Conduct for Members applies (£25), you must declare its receipt as soon as possible, in the Hospitality Register kept by the Head of Legal and Democratic Services.

## Training

46. As a member of a Planning Committee you must undergo training in planning procedures, normally within three months of appointment to the Committee and at appropriate intervals thereafter. A record will be kept by the Head of Legal and Democratic Services of the training you undertake. Consistent failure to undertake this training may result in disqualification from voting at the Planning Committee.

## The Role of Officers

47. In making delegated decisions on applications, officers will:
  - act fairly and openly
  - approach each application with an open mind
  - carefully weigh up all the material planning considerations
  - avoid inappropriate contact with interested parties
  - ensure that reasons for decisions are clearly stated
48. In reporting to Committee on non-delegated applications, officers will:
  - provide professional and impartial advice
  - make sure that all information necessary for a decision to be made is given
  - set the application in the context of the Development Plan and all other material considerations



- include the substance of objections and the views of people who have been consulted
  - provide a clear and accurate written analysis of the issues
  - give a clear recommendation
49. Record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. Particular care is to be taken with delegated decisions, which should be as well documented and recorded as those taken by members. These principles apply equally to enforcement and development plan matters.
50. Any material planning information which is received after the written report has been prepared and before the cut-off time specified in paragraph 26 above will be presented orally to the Planning Committee by officers.
51. The Head of Planning Services, in discussion with the Chairman of the Planning Committee, may withdraw any item from the agenda of the Planning Committee after the preparation of the report but before discussion by the Planning Committee if the circumstances of the consideration of an application change within that period.
52. Officers are responsible for carrying out the decisions of the Planning Committee, whether or not those decisions are in line with officer recommendations.

## **Discussions About Planning Applications**

53. All officers taking part in pre-application or post-submission discussions with applicants, supporters or objectors should make it clear that decisions on planning applications are taken either:
- by the elected Members in Committee, or
  - in specific circumstances by the Head of Planning Services or by an officer to whom he or she has the power to delegate.
54. A written note will be made of all such meetings and may be distributed. The meeting note and any follow-up correspondence must be placed on the planning application file, in case an application is made following initial discussions.

## **Disclosures of Interest**

55. Officers must play no part in the processing of any application in circumstances where there is, or would be perceived to be, a conflict between their personal or financial interests, those of their families or friends, and their professional duty. They must openly declare the existence of any such conflict in writing to the Head of Planning Services. Any interest the Head of Planning Services has in an application must be declared to the Head of Legal and Democratic Services.

## **Applications Submitted by Officers**

56. All applications submitted from officers holding politically restricted posts as defined in the Local Government and Housing Act 1989 or employed in Planning Services must be reported to the relevant Area Planning Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to officers. If the officer concerned is present at the meeting of the Planning Committee at which such

an application is determined, he or she must leave the room during consideration of the application.

## **Hospitality**

57. Officers are discouraged from receiving hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, officers will ensure that it is of the minimum level. If it exceeds £25 they must declare it as soon as possible in the Hospitality Register which is retained by the Head of Legal and Democratic Services.

## **Action on Decisions Taken Contrary to Professional Advice**

58. In cases where an officer recommendation for approval has been overturned by Committee and an appeal is lodged:
- officers must give full support to Members and any external witnesses in preparing evidence for any public inquiry, short of giving evidence themselves.
  - officers will give evidence themselves only in exceptional circumstances, where their Code of Professional Conduct is not breached
  - where a hearing is to be held, with no cross-examination, officers may give evidence themselves, but this will normally be only if the officer concerned has not been involved in formulating the original recommendation
  - officers must give full support to Member decisions which are appealed using the written representations procedures

## **General**

59. The operation of this Code will be monitored by the Standards Committee and revised if necessary following a change in the Council's Rules of Procedure or Constitution

Herefordshire Council

November 2007