

## Section 6 - The Planning Code

This Code supplements the Councillor Code of Conduct. (Part 5 Section 2) Where the provisions of this Code conflict with or are inconsistent with the Councillor Code of Conduct, the latter shall prevail. However, following this Planning Code should assist Councillors in complying with the Councillor Code of Conduct. Councillors should ensure that they are familiar with both Codes and take advice from the Monitoring Officer where necessary to ensure compliance.

The obligations and responsibilities of this Code apply to all Councillors of the Planning and Regulatory Committee and in similar ways to all other Councillors.

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 all 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 Councillor Code of Conduct, 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 Councillors 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 discharges 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.

This code consists of three principal parts. The first relates to Members of the Committee. The second relates to all other Members of the Council and the third relates to Council officers

### **PART 1 - THE ROLE OF COUNCILLORS WHO ARE MEMBERS OF THE COMMITTEE**

5.6.1 In making decisions on planning applications, **you will**:

- (a) act fairly and openly and without prejudice**
- (b) approach each application with an open mind**
- (c) carefully weigh up all the material planning considerations**
- (d) avoid inappropriate contact with interested parties**
- (e) ensure that valid reasons for decisions are clearly stated.**

5.6.2 **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 Herefordshire Local Plan Core Strategy 2011 - 2031 and all material planning considerations.

5.6.3 **You must not** give instructions to officers nor may you place pressure on officers in order to secure a particular recommendation on an application.

5.6.4 **You will not** use your position improperly to confer or secure for yourself, or for any other person, an advantage or disadvantage.

#### 5.6.5 **Discussions with applicants**

5.6.6 **Pre-application meetings** with prospective applicants are encouraged, but, to avoid misunderstandings, they require a degree of formality. They **will normally involve officers**, and will follow the guidance in the following paragraph.

5.6.7 It will be made clear at pre-application meetings that:

(a) Member or officers' initial views and advice are given on a without prejudice basis which will be consistent with the provisions of the current Local Plan Core Strategy and other adopted Council policies

(b) no decisions may be made or advice given which would bind or otherwise compromise any planning decision

(c) Members should avoid giving separate advice on the development plan, material considerations, or planning obligations

5.6.8 A written note is made of the discussion and will be made available for public inspection, subject to the usual rules about access to information, if and when an application is submitted.

5.6.9 **You may, following discussion with the appropriate planning officer, 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. It is recommended that at least one Planning Officer will be present at all such meetings.

#### 5.6.10 **Lobbying**

5.6.11 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, **members will:**

(a) **take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have taken into account all relevant considerations.**

(b) **direct lobbyists or objectors to the planning officer, and**

- (c) **advise the head of regulatory and development management services as soon as possible of the existence of any substantial or abnormal lobbying activity.**

#### **5.7.12 Site Inspections**

- 5.6.13 Site Inspections by the 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:

- (a) the character or appearance of the development itself is a fundamental planning consideration; or
- (b) a judgement is required on visual impact; or
- (c) the setting and surroundings are fundamental to the determination or to the conditions being considered, and cannot reasonably be made without visiting the site in question.

The chairperson of the planning committee and the service director, regulatory will determine which applications will be the subject of a prior site inspection. This does not prevent any member of the committee requesting a site inspection of a site at the committee meeting when it has not already been visited by this procedure.

- 5.6.14 Site Inspections should not be held when inspection of the site is irrelevant to the material conditions. Any member of the committee may request a site inspection, but reasons based on the above criteria must be stated.
- 5.6.15 **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 chairperson or the officers to seek clarification. Neither the applicant/agent nor third parties will be allowed to participate in the site inspection. The input of these parties is made at the committee meeting itself. At the discretion of the chairperson of the planning and regulatory committee the appropriate parish or town council may be invited to observe the inspection. In these circumstances the parish or town council may not contribute to the opportunity to ask questions of officers on site.
- 5.6.16 **No discussion of the merits of the case is permitted at site inspections and all questions from you will be put through the chairperson.**
- 5.6.17 The visiting party will stay together as a group. Wherever possible the party should arrive at and leave the site together.
- 5.6.18 As a member of the planning and regulatory 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 meeting of the planning and regulatory 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 any material facts arising from the site visit which the assistant director regulatory, environment and waste services considers should be reported to the committee.

#### 5.6.19 Conduct of visits

- (a) visits will be conducted in a formal manner.
- (b) the chairperson or vice-chairperson will open the visit and remind members of its purpose and conduct.
- (c) 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 visit and the outcome reported to the subsequent committee.
- (d) Ward members will be invited to site inspections in their wards and asked to highlight local issues relevant to the site inspection.
- (e) the chairperson or vice-chairperson will close the visit.

#### 5.6.20 General matters

- (a) No decision will be made concerning the application on site.
- (b) no formal notes will be made.
- (c) no hospitality will be accepted.

5.6.21 **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.**

#### 5.6.22 Material submitted to committee

5.6.23 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 assistant director regulatory, environment and waste services.

5.6.24 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 noon 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. A printed committee update will be published to the council's website the evening before the meeting.

#### **5.6.25 Declaration of interests at committee**

5.6.26 Interests need to be considered and declared as necessary in accordance with the code of conduct.

5.6.27 **If you have a Table 1: Disclosable Pecuniary Interest or Table 2: Other Registerable Interest** then under the code, you may attend a Planning and Regulatory Committee meeting only as a member of the public, for the purposes of making representations, **provided** that the public are also allowed to attend the meeting for the same purpose. You must declare that you are attending the meeting as a member of the public at the start of the meeting. If you have such an interest you should notify the monitoring officer before the meeting that you wish to speak.

5.6.28 If you have such an interest 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 will not be acting in your capacity as a councillor and may make representations for no longer than three minutes (the time allocated to public participants at planning and regulatory committee). Thereafter, you may take no further part in the debate or decision-making of the planning and regulatory 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.

5.6.29 Withdrawal from the meeting involves physically leaving the meeting room. Moving to the public gallery is not sufficient. The chairperson of the committee should suspend the proceedings of the committee briefly while you leave the committee room.

5.6.30 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 disclosable pecuniary interest has been declared, that dispensation applies also to this code, but you still need to declare the interest.

#### **5.6.31 Cabinet members**

5.6.32 There will be occasions when a cabinet member will wish to express comments on a particular application. This may include where the council is the applicant. Cabinet members are permitted to **speak at the planning and regulatory committee meeting for the item, but must then withdraw from the meeting while the application is discussed and determined.**

5.6.33 Where a cabinet member has a ward representation role, they may, at the discretion of the chairperson, also speak as local member.

#### **5.6.34 Planning and regulatory committee members who serve on parish and town councils**

- 5.6.35 Some councillors will be members of parish or town councils as well as Herefordshire councillors. In such circumstances members may express their views and vote at the respective meetings of both councils having regard to the information available to them at that time. Having voiced a view and/or voted at a parish council meeting will not of itself prevent involvement in decision making at planning and regulatory committee. Prior indication of a view on matter does not amount to predetermination. Similarly members on the planning and regulatory committee can attend parish meetings in their ward and speak about planning applications. Talking to constituents be they applicants or objectors is permitted; it does not mean you have a closed mind. A committee member will not be taken to have a closed mind just because they may previously have done anything that directly or indirectly indicated what view they had, would have or might take.
- 5.6.36 Voting at committee**
- 5.6.37 **You will only be able to vote on an application before a committee if you have been present for the whole of the presentation of and discussion on the application.**
- 5.6.38 Decisions contrary to officer recommendations or to development plan policies**
- 5.6.39 From time to time, there will be occasions when you or the planning and regulatory committee disagree with the professional advice on an application given by the assistant director regulatory, environment and waste services.
- 5.6.40 The law requires that decisions should be taken in accordance with the development plans unless material considerations indicate otherwise (S38A Planning and Compulsory Purchase Act 2004)
- 5.6.41 If the Planning and Regulatory Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal) a detailed minute of the Committee's reasons should be made and a copy placed on the application file. In this context Members should be prepared to explain in full their reason for not agreeing with the officers' recommendation. In so doing, Members should observe the 'Wednesbury principle' which requires all relevant information (i.e. material considerations) to be taken into account and all irrelevant information (i.e. non-material matters) to be ignored.
- 5.6.42 Applications in which a member of the council has an interest**
- 5.6.43 All applications which are submitted by or on behalf of a member of the council in their private capacity, by their partner, a member of their family or a close association must be drawn to the attention of the assistant director regulatory, environment and waste services by the member in writing. If the member has a material interest in the outcome of the application or if the application is submitted by their partner, it will be determined by the planning and regulatory committee and if you are a member of that committee **you must take no part in the determination of the application. You must declare a disclosable pecuniary interest and may only speak as the applicant or appoint an agent to speak on your behalf in accordance with the Planning Rules (Part 4 Section 8 paragraph 4.8.34 (Public Speaking at Planning and Regulatory Committees)).**

5.6.44 If the application is from a member of your family or a close association, or you otherwise have a conflict of interest, then the chairperson of the planning and regulatory committee 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. If the application is also in your ward this member will speak at committee.

#### **5.6.45 Hospitality**

5.6.46 As a member of the council **you are strongly discouraged from receiving hospitality from people with an interest in any planning proposals**. 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 requirement for declarations of gifts and hospitality applies, you must declare the offer as soon as possible in the register kept by the monitoring officer.

#### **5.6.47 Training**

5.6.48 As a member of the planning and regulatory committee you are required to undergo training in planning procedures. This will normally take place within three months of appointment to the committee and at appropriate intervals thereafter. A record will be kept by the monitoring officer of the training you undertake. Members who have not undertaken the training, may not participate in meetings of the committee until such training has been completed.

### **PART 2 - THE ROLE OF COUNCILLORS WHO ARE NOT MEMBERS OF THE COMMITTEE**

5.6.49 Non-committee members who are members for wards affected by an application represent their own views or that of their constituents as a consultee and will be consulted on the application invited to speak at the planning and regulatory committee and attend any site inspections that take place in their ward.

5.6.50 Non-committee members should not lobby planning and regulatory committee members in order to secure the outcome on a planning application that either they or their constituents seek. The ward member, the appropriate town or parish council and local residents will have the opportunity to present their views to the Planning and Regulatory Committee in accordance with the council's procedure for public speaking at the planning and regulatory committee.

5.6.51 All council members may attend meetings of the council's planning and regulatory committee even if they are not a member of the 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 and Regulatory Committee.

### **PART 3 - THE ROLE OF OFFICERS**

5.6.52 In making delegated decisions on applications, officers will:

- (a) act fairly and openly

- (b) approach each application with an open mind
- (c) carefully weigh up all the material planning considerations
- (d) avoid inappropriate contact with interested parties
- (e) ensure that reasons for decisions are clearly stated

5.6.53 In reporting to committee, officers will:

- (a) provide professional and impartial advice
- (b) make sure that all information necessary for a decision to be made is given
- (c) set the application in the context of the development plan documents and all other material considerations
- (d) include the substance of objections and the views of people who have been consulted
- (e) provide a clear and accurate written analysis of the issues
- (f) give a clear recommendation

5.6.54 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.

5.6.55 Any material planning information which is received after the written report has been prepared and before the cut-off time specified in paragraph 5.6.24 above will be presented orally to the Planning and Regulatory Committee by officers.

5.6.56 The assistant director regulatory, environment and waste services in discussion with the Chairperson of the Planning and Regulatory Committee, may withdraw any item from the agenda of the Planning and Regulatory Committee after the preparation of the report but before discussion by the Planning and Regulatory Committee if the circumstances of the consideration of an application change within that period.

5.6.57 Officers are responsible for carrying out the decisions of the Planning and Regulatory Committee, whether or not those decisions are in line with officer recommendations.

#### **5.6.58 Discussions on Planning Applications**

5.6.59 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:

- (a) by the elected Members in Committee, or

(b) in specific circumstances by the assistant director regulatory, environment and waste services or by an officer to whom they have the power to delegate.

5.6.60 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.

#### **5.6.61 Disclosures of Interest**

5.6.62 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 assistant director regulatory, environment and waste services. Any interest the assistant director regulatory, environment and waste services has in an application must be declared to the Monitoring Officer.

#### **5.6.63 Applications Submitted by Officers**

5.6.64 All applications submitted from officers who are employed in the planning service or work closely with it or who are a senior manager as defined in the council's pay policy statement, or by a close family member such that the officer has a material interest in the application, must be reported to the Planning and Regulatory 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 and Regulatory Committee at which such an application is determined, they must leave the room during consideration of the application.

#### **5.6.65 Hospitality**

5.6.66 Officers may not receive gifts or hospitality beyond usual refreshment (such as tea or coffee) at a meeting, from people with an interest in a planning proposal.

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

5.6.68 In cases where an officer recommendation for approval has been overturned by Committee and an appeal is lodged:

- (a) officers will give full support to Members and any external witnesses in preparing evidence for any public inquiry, short of giving evidence themselves; and
- (b) officers will give evidence themselves only in exceptional circumstances, where their Code of Professional Conduct is not breached; and
- (c) 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; and
- (d) officers must give full support to Member decisions which are appealed using the written representations procedures.