

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

Report By: County Secretary and Solicitor

Wards Affected

County wide

Purpose

1. To review paragraph 39 of the Code of Conduct.

Background

2. At its meeting on 17 January 2003, the Council agreed to adopt the Herefordshire Planning Code of Conduct recommended by the Standards Committee based on Government Guidance and practical experience. The Code now features as Appendix 13 in the Council's Constitution.
3. Paragraphs 38 and 39 of the Planning Code of Conduct deal with "applications in which a member of the Council has an interest".
4. The relevant text is repeated below for ease of reference.

Applications in which a Member of the Council has an interest

38. 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 (as defined in 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.
 39. **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-Committee) on your behalf.**
5. The advice is clear in that members who have a prejudicial interest must take no part in the determination of the application. The guide does however allow members who have submitted a planning application in their private capacity to appoint an agent who can speak on their behalf at the Committee.
 6. However, as drafted, it is not clear whether or not this ability to appoint an agent also applies to applications submitted by a "relative or your partner" as set out in

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paragraph 38. This issue recently arose in connection with an application by a son of one of the Herefordshire Councillors for a planning permission.

7. The Standards Committee considered this matter on 15 October 2004 when it recommended that clarification be sought from the Standards Board for England on the use of agents in planning matters by members with prejudicial interests.
8. Clarification was received from the Standards Committee before the Council meeting on 11 February 2005. On the basis of that advice, clause 39 was left as originally drafted which allows members to appoint an agent.
9. However, as drafted, clauses 38 and 39 would benefit from revision to pick up on the following issues.
 - It is not clear that the affected relative or partner can speak at committee meetings or appoint an agent to speak on their behalf in any event. The prohibition in clauses 38 and 39 applies only to the member.
 - It would be helpful if guidance provided information for the relative or partner affected as to which member, if any, they could approach for advice or support, especially where the 'prejudiced' member is also their local member. This has happened on a number of occasions. It is not clear whether or not the Standards Committee would approve of another member (possibly appointed by the Chair of the main Planning Committee) to provide procedural and other advice to the relative or partner.
 - Additionally, the role of the Town and Parish Council in the planning process needs to be recognised. It is a responsibility of the local member to provide procedural and general advice to their local Town and Parish Council in relation to Herefordshire Council issues including planning matters. Again, if the local member has a prejudicial interest in relation to an application, this does deprive the Town/Parish Council of local advice and assistance. It may be that the Head of Planning Services could fill this role or indeed a nominated member as suggested above.

RECOMMENDATION

THAT the Standards Committee consider the drafting of clauses 38 and 39 and whether any revision is necessary in the light of the concerns outlined above.

BACKGROUND PAPERS

- Appendix 13 of the Council's Constitution