

Appendix 20 - Code of Good Planning Practice

Introduction

Town and Country Planning is a sensitive area of Local Government work where considerable economic returns and social and environmental consequences both positive and negative can hinge on single planning decisions. Whilst development plan making is an Executive function for the Council, all decisions on planning applications are required by law to be made outside the executive decision making framework, as part of the Council's 'regulatory' functions.

This Code of Good Practice sets out the behaviour and practices the County Council expects should be observed in deciding applications made for planning permission and for associated planning approvals. It includes the normal process for those applications which are reported to the Council's Regulatory Planning Committee, so that the Council's expectations and practices for both Members and Council Officers can be clear to all. These determinations can often be highly controversial. This Code of Practice is designed to be fair both to applicants and to other people to ensure that the Council makes impartial decisions in the interests of the community at large.

1. Basic Principles

- 1.1 The basis of the planning system is the consideration of development proposals in the context of the wider public interest.
- 1.2 The successful operation of the planning system relies on ensuring that officers and Members act in a way which is not only fair but is clearly seen to be so.
- 1.3 For the purpose of this Code of Practice, unless the particular context dictates otherwise:-“Committee” refers to the Regulatory Planning Committee of the County Council, “Members” refers to the current elected members of the County Council, “Substitute Members” refers to any Members acting by substitution arrangement at specific Committee meetings as members of the Committee in place of members duly appointed as members of the Committee, “Committee Members” refers to the Members duly appointed as members of the Committee together with any relevant Substitute Members, and “Local Member” refers to any Member who is the member representing a County Council ward which is affected by a development proposal under a current planning application to the Council.

- 1.4 The Derbyshire County Council Code of Conduct for Members (“The Members Code of Conduct”) which is contained in Part 5 of the Constitution governs both declarations of interest and expected behaviour by Councillors generally. It must be followed scrupulously for planning applications coming before the Regulatory-Planning Committee just as it must be for other items. All Councillors should review their disclosable interests regularly, and it is particularly important for Committee Members to do this.
- 1.5 Members have a responsibility for representing the communities in their constituencies as Local Members, but also an overriding duty to the wider community. They should act in the general public interest in relation to planning matters. There is no reason in principle why Local Members for particular planning applications who are also Committee Members should not participate in the Committee decision making process for those applications, provided they comply with this Code and the Members’ Code of Conduct.
- 1.6 Planning applications submitted by the County Council for its own development will be treated in the same way as those by others in terms of the assessment of the proposal in relation to the policies of the development plan and other material planning considerations.
- 1.7 Should an application be submitted to the Council by or on behalf of:
 - (i) any Members or officers involved in the planning process,
 - (ii) a spouse or civil partner of such an officer or Member;
 - (iii) a person with whom such an officer or Member is living as husband or wife or as civil partner or
 - (iv) any other person with whom such an officer or Member has a close association

the Member or officer concerned will, as soon as reasonably practicable following either the submission of the application or subsequently first becoming aware of the application and connection with it, inform both the Head of Planning and the Council’s Monitoring Officer and take no part in processing or determining the application.

- 1.8 A scheme of delegation to officers is set out in Part 3 of the Derbyshire County Council Constitution. It enables most planning applications and associated submissions to be determined by the Head of Planning Services, (following consultation with the Chair of the Committee if the matter raises policy or political issues). In practice therefore the applications which need Committee decisions will quite often be controversial, and tend to involve many interrelated relevant considerations (known as “material considerations”). The normal role of the Committee Members deciding on any application before it is to reach

a collective decision in which each consideration plays some part (according to whatever 'strength' or 'weight' the members may find it should be given). In practice this often means an overall balancing exercise between competing issues of harm and benefit, guided by relevant planning policies.

- 1.9 The role of the Head of Planning Services and planning case officers in producing any report on an application for a Committee decision is to provide the Committee Members with sufficient professional and impartial advice and information and assistance to enable them to make a well informed and reasoned decision on the application which is in the public interest. They will therefore ensure that all the necessary information for a decision to be made is provided together with a clear and accurate analysis on the relevant issues including the Development Plan policies and other material considerations. All reports to Members will contain a clear recommendation which will reflect the reasoning and conclusions under the analysis. A recommendation for approval is almost always on the basis that permission would be granted subject to a set of conditions, to keep the impacts on amenity arising from the development within acceptable limits.
- 1.10 The County Council endorses the Royal Town Planning Institute (RTPI) Code of Conduct and in particular that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. All officers in the Authority attending to planning matters are expected to act in accordance with the RTPI Code of Practice whether or not they are RTPI members. Members of the Council should respect those professional responsibilities at all times.
- 1.11 Committee Members may raise with the relevant officers any points which they consider to be of relevance to the determination of a planning matter which the County Council is to determine. However, Members should not otherwise seek to influence officers either towards or against any potential officer recommendations on planning matters.
- 1.12 Members should not seek from officers, and officers will not normally provide, any opinion on the acceptability or otherwise of an application which might be decided on by the Committee prior to publication of a full report containing an officer recommendation

2 Training

- 2.1 Training sessions relating to the role of the Committee and its membership will be provided for all Members of the County Council on a yearly basis. All Committee Members (including all members eligible to serve as Substitute Members), are expected to attend these sessions to enhance

their understanding of the role as members of the Committee and/or to bring it up to date including of the Committee and Members wishing to be or remain able serve at meetings of the Committee from time to time as substitute members.

- 2.2 All Committee Members (including substitute members) shall before serving on the Committee have received introductory training in planning principles provided by, or to the satisfaction of, the Head of Planning Services in consultation with the Director of Legal Services, prior to serving on the Committee. Such training is generally provided for Members following a County Council election but may be arranged as necessary at other times on a bespoke basis.
- 2.3 Any Committee Members who have not received introductory training in the principles of planning as referred to at 2.2 above shall not participate as members on the Committee until they have received such training.

3 Availability of Information relating to Planning Applications

- 3.1 All planning applications receive publicity in accordance with legal requirements and the Council's current practices, which vary depending on the type of application and its likely impact. All publicity by the Council relating to planning applications will include clear information on how to make representations on them to the County Council
- 3.2 Whilst the Council will endeavour where practicable to have regard to all written representations, there is no guarantee that those received after end of the publicised period for representations will be taken into account. It will not generally be practicable for the Committee to be advised of the relevance of late representations submitted later than three working days before the Committee meeting.
- 3.3 Local Members will be informed of planning applications that fall to be determined by the County Council as soon as practicable following receipt of the application.
- 3.4 Copies of all current 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 on the Council's website, and at County Hall, Matlock during office hours.

4 Lobbying, Impartiality, and Predetermination

- 4.1 Committee Members shall avoid expressing an opinion which may indicate having reached a conclusion or otherwise appearing to commit the

Authority on a planning application until the item is before the Committee for a decision with all the relevant information, evidence and arguments put before it in a report by the Head of Planning Services.

- 4.2 Committee Members are not prevented from participating as normal in the Committee decision making just because an application affects land in the local area they represent as a Councillor (whether as Local member or at District or Parish level). However they cannot participate as Committee Members where, due to any local connection(s) they may have with the application, this would result in any conflict with any provisions of either this Code of Practice or the Members Code of Conduct.
- 4.3 Where they feel it is appropriate to do so, Committee Members may express an inclination or predisposition towards a particular body of opinion about an application in advance of the Committee, provided they keep an open mind regarding the application. Committee Members should in all statements of this kind also state clearly that they will not reach a final view on the proposal before all the relevant information, evidence and arguments are put before the Committee. The Localism Act 2011 has confirmed that making such a statement is not in itself evidence of any predetermination. Relevant guidance is contained in the Local Government Association and Planning Advisory Service guidance note "Probity in planning for councillors and officers", April 2013.
- 4.4 Any Committee Members who reach or express a final view on a planning application prior to the Committee meeting at which a decision is to be taken will declare this if they attend the meeting, and will be precluded from participating in the consideration and decision by the Committee on the application (see 4.1). A member in this position must withdraw from the meeting room for that particular item, unless they are also a Local Member in relation to the application in which case they may speak before the Committee at the appropriate time during the item as the local ward member, before leaving the room for the remainder of that item.
- 4.5 Committee Members will not organise support for or opposition to a proposal, or lobby other Committee Members to support or oppose a proposal (other than when addressing the Committee).
- 4.6 Letters and emails received by Members which provide information pertinent to an application received by the Council and/or are intended for consideration in the determination of the application should be passed on to the Head of Planning Services so that they can be considered in the processing of the proposal and the drafting of a report to the Committee.
- 4.7 Committee Members can expect to be approached and lobbied from time to time on development proposals by applicants and by opponents and

supporters (by post, telephone, e-mail, face-to-face contact and/or other means). Whilst this is not normally a cause for concern, any Member who is subject to significant lobbying in respect of an application should briefly record the circumstances and content of such lobbying and inform the Head of Planning Services accordingly by e-mail or letter.

- 4.8 The practice and procedure in this Code of Practice is designed to accord with and complement the Members' Code of Conduct. However whenever Members perceive any incompatibility between the respective codes they should continue to adhere to compliance with the contents of the Members' Code of Conduct, whilst requesting guidance from the Director of Legal Services on the apparent incompatibility.
- 4.9 It is particularly important in the context of planning applications, that Members follow scrupulously the Members' Code of Conduct in respect of hospitality, gifts, and declarations and registers of interests. Members should always take care to avoid placing themselves in a position that could lead to the public thinking they are seeking preferential treatment for themselves, or biased towards their friends or relatives or any firm or body with which they are personally connected.
- 4.10 At each meeting of the Committee prior to the consideration of the Report of the Head of Planning Services on the agenda, any Committee Members who have been subject to significant lobbying on any one or more of the applications referred to the Committee under the Report should declare this for each of those relevant applications.

5 Discussions Prior to Determination

- 5.1 Pre-application meetings between potential applicants and local planning authorities have become widely recognised as a useful opportunity for productive discussion prior to application proposals being finalised. These meetings, are encouraged by the County Council, but to avoid them being misunderstood they are generally held at officer level without Member attendance. It is always made clear at the outset of such meetings that the discussions will not bind the Council to making a particular decision.
- 5.2 For major applications for proposed developments, the Head of Planning will invite potential applicants to make "pre-application" presentations before Committee Members, which all committee members and members able to act as substitutes would be invited and encouraged to attend. These presentations will generally be arranged before the formal submission of an application for planning permission, to enable members to become engaged with the proposals from a relatively early stage by both being informed about them by the applicant and having an opportunity to

raise any particular relevant issues affecting the proposals directly with applicant representatives.

- 5.3 To avoid any misunderstanding of their position or any appearance of predetermination, Members should take care that in any discussions or conversations they may have, they avoid expressing any overall opinions for or against any development proposals and should not enter into any debate over their acceptability.
- 5.4 So long as they keep within the parameters of this code, Members of the Committee are free to discuss planning applications which have yet to be considered by the Committee with other committee members and other members who are not on the Committee, including at meetings of the political party groups.
- 5.5 However, no Members or political groups should direct whip or instruct any Committee Members, or put them under any coercion potential sanction or other disincentive or incentive, regarding their voting on any applications in Committee. Such activities in respect of any Committee Members would be seeking to influence decisions of the Committee in a way that would undermine the integrity of the planning decision process, and would also be liable to be in contravention of the Members' Code of Conduct.
- 5.6 Committee Members must not under any circumstances allow their own planning judgements on any application before the Committee to be influenced by any points raised in any discussions that they would not be prepared to refer to as a material consideration during any debate on the application in Committee.
- 5.7 Committee Members are encouraged to contact the Head of Planning Services before attending or agreeing to attend any meetings about development proposals which may be arranged by anyone outside the Council (e.g. applicants objectors or lobbying groups) This may enable appropriate guidance (taking into account the nature of the proposal and the meeting arrangement) to be given to the Committee Members, to help them avoid compromising or appearing to compromise their impartiality in relation to the proposals. It may occasionally be inadvisable for Committee Members to attend a particular meeting. In other cases it may be considered helpful for the meetings also to be attended by appropriate officers and for notes to be taken. It might also be appropriate for Committee Members attending such meetings, to make it clear from the start of the meeting that they are there to become better informed about any relevant issues relating to the proposal rather than to offer any views on its acceptability. .

6 Declarations of Interest

- 6.1 The relevant requirements relating to declarations of interests under the Members' Code of Conduct apply to Members attending meetings of the Regulatory-Planning Committee as well as other Committees of the Council. They apply to a Councillor who is not a Member of the Committee but who attends a meeting, as well as to Members and substitute Members serving of the Committee. The provisions of the Members' Code of Practice are contained in Appendix 12 to the Constitution
- 6.2 As explained in section 4 above, any member serving on the Committee who reaches or expresses a final view on a planning application prior to the Committee meeting at which a decision is to be taken must not participate as a Committee member for that item as must normally withdraw from the meeting room for that particular agenda item.
- 6.3 A Committee Member who is also an elected member of a District, Parish or Town Council which has expressed a view on an application which is before the Committee is likely to be regarded as having a non-pecuniary interest, which is to be declared as provided by the Members' Code of Conduct. This does not by itself disqualify a Committee Member from participating in the Committee debate and decision on that application (due to bias or pre-determination) provided that the Member retains an impartial view.
- 6.4 The Director of Legal & Democratic Services, as the County Council's Monitoring Officer, will give advice on whether an interest should be declared and/or the nature of the interest to be declared, in cases of any doubt. Members are welcome to request such advice initially as soon as they become aware of a potential source of interest they are unsure about.

7 Site Visits

- 7.1 Site visits in relation to any current applications for planning permission may be held with the aim of assisting members to acquire a clear understanding of the nature of the development proposed, its location, and potential impact.
- 7.2 The Head of Planning Services, in consultation with the Chair (or Vice Chair in his absence), normally determines whether a site visit should be arranged for an application, on the basis of:
- the nature of the proposal, its location, its potential impact and any additional information which committee would gain from a site visit;
 - the representations which have been received;

- the proposed recommendation of the Head of Planning on the Application (applications recommended for refusal would normally be subject to site visit);
- any request made by a Local Member in response to consultation;
- whether the aim could be met by other means, e.g. an officer presenting a visual projection of plans and images of the site during the Committee meeting

7.3 Normally any site visit would, if practicable, be arranged to take place on the day of the Committee meeting to consider the application. The following would normally be notified of any site visit that is arranged:

- Applicant(s)
- District/Borough Council(s)
- Parish Council(s)
- Local Member(s)
- Those members of the public and others who have made making representations in writing to the Council in support or in objection ("those making representations")

7.4 In line with the aim of the site visit, those present would normally speak on the invitation of the Chair, and only to address as points of clarification on observable features relating to the subject matter of the application and/or any representations that have been received about it. As far as practicable, those who have made representations will normally be invited to point out any significant geographical or other physical features that relate to their representations.

8 The Committee Decision Process

8.1 When the application is included on a Committee agenda as an item to be determined by the Committee (normally five working days before the next meeting), applicants, district/borough councils, parish councils, Local Member(s) and others who have made representations on the application are notified by the Planning Service of (1) the Committee meeting arrangements and (2) the nature of the relevant officer recommendation, and asked to inform the Planning Service no later than the two working days before the meeting if they wish to speak (for up to 3 minutes each) on their representations at the Committee meeting or to send a representative to do so. Those who are to make speeches are encouraged to arrive no later than 15 minutes before the meeting session to assist identification of speakers and briefing by the Democratic Services Officer for the meeting.

- 8.2 All applications referred to Committee for determination will have a full written report from the Strategic Director including a reasoned assessment of the proposal and a justified recommendation.
- 8.3 Where an application is recommended for refusal the reasons for that will be expressed fully in the officer's report.
- 8.4 Items for which there are speakers to be heard at the Committee may be brought forward from the order of items in the agenda by the Chair.
- 8.5 An officer representing the Head of Planning Services outlines the proposal and main issues together with any updating of the report. Members of the Committee are then able to ask any questions of the officer.
- 8.6 The Chair then invites each person who is attending to speak before the Committee with regard to representations on the application, to speak in the following order:
- Local Member
 - District/Borough Council
 - Parish Council
 - Action Groups or other organisations
 - Individual objectors
 - Applicants
 - Supporters
- 8.7 **As far as practicable each speaker is allowed up to 3 minutes speaking time.**
- 8.8 The speakers are not permitted to speak beyond three minutes or to enter into debate with members or officers.
- 8.9 Following each speech Members of the Committee may ask the officer any questions about any matters arising from that representation. The officers shall then endeavour to respond immediately to such questions as far as is practicable.
- 8.10 Following the completion of these representations and any questions and officers' responses arising from them, the officers may then provide any further comments or information about the matter as they may consider appropriate in the light of such representations, questions and responses.
- 8.11 The application will then be open to any debate between Members of the Committee.

- 8.12 Members of the Committee are generally free to propose motions and vote as they consider appropriate in the public interest on planning matters, provided this is having regard only to relevant planning considerations (“material considerations”), which would include the officer recommendation.
- 8.13 Immediately prior to any motion being voted on for a final determination of any matter before the Committee, the Chair shall ask the officer to indicate whether or not he/she considers that further consideration of the matter in Committee should be deferred to a subsequent meeting (this may be considered to be advisable or necessary if new points of material relevance to the matter have become apparent at the meeting, to allow further investigated or examination in relation to such points).
- 8.14 Subject to any identification by the officers of a matter being suitable for deferral as provided for above, the Committee shall normally proceed to consider and to seek to determine the matter at the same meeting.
- 8.15 The Committee through the Chair may request clarification from officers on any relevant planning or legal issues relating to the matter at any time prior to a motion being voted on.
- 8.16 The Chair shall have full discretion (both in advance of and during the meeting but, as far as practicable, following consultation with the Director of Legal & Democratic Services or his legal officer attending the meeting) to prescribe for any particular matter any changes to the usual participation procedure described above as may appear to the Chair to be necessary at any time for the fair or effective conduct of the business of the meeting,.

Decisions contrary to officer recommendation

- 8.17 From time to time the majority of Committee Members present may disagree with the professional officer recommendation. Any decisions on planning applications which are contrary to officer recommendations must be supported by a clear statement of the reasons for such a decision, for recording in the minutes of the meeting and any decision notice of refusal also requires a full statement of reasons
- 8.18 Therefore in practice, when it becomes clear during a Committee meeting that there is a significant body of opinion amongst the Committee Members present which would support a decision contrary to the officer recommendation, it may be necessary for the Committee to have an adjournment. This could involve just a short adjournment within the meeting session, or a deferral to a further committee session or meeting, depending on how quickly the Committee Members intending to propose

and second such a motion are able to produce a suitably worded motion which includes a sufficient statement of reasons for taking such a decision

9. Monitoring Quality of Development

9.1 There will be two tours of inspection arranged each year to enable Committee Members to observe the quality of development under planning permissions granted. This will include waste management facilities, working mineral operations and the County Council's own development. These site visits will be agreed with the Chair of the Committee in advance.

9.2 For each site visited for observation purposes a briefing note will be prepared and any necessary permission to gain access to private land will be obtained.

10. Conditions and Planning Obligations

10.1 Officers may in advance of the production of reports to Committee on applications negotiate with the applicants and/or land owners terms to provide for draft agreements with Planning Obligations and / or draft planning conditions associated with the planning applications, in the event that the Committee decision is to approve grant of permission subject to conditions and/or completion of agreements to provide Planning Obligations.

10.2 Reports on applications to the Committee will whenever practicable include any Heads of Terms for any Planning Obligations and draft conditions which may be recommended in connection with the determination of the applications.

10.3 Copies of concluded decision notices and Legal Agreements will be available for public inspection both at County Hall and in conjunction with the statutory planning registers except to the extent that public access to any information content is restricted or prevented by Data Protection law.

10.4 Officer recommendations for resolutions to approve grants of planning permission that include requirements for Planning Obligations to be provided in advance of permission being granted will be restricted to matters that are sufficiently relevant to the planning application, according to prevailing case law.

11 Feedback and Complaints

11.1 Any suggestions or concerns arising from this Code of Practice can be raised with the Director of Legal Services or the Head of Planning Services. The Council also has a formal complaints system in operation which can be used if necessary and enquiries should be addressed to the Director of Legal & Democratic Services.