

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Development Control Committee	
MEETING/ DECISION DATE:	29th April 2015	AGENDA ITEM No.
TITLE:	Members Planning Code of Conduct	
WARD:	All	
AN OPEN PUBLIC ITEM		

1 THE ISSUE

- 1.1 To consider an updated Members Planning Code of Conduct that takes account of recent Government advice.

2 RECOMMENDATION

- 2.1 To endorse the Members Planning Code and recommend that it be approved at full Council.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 None

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The current Code of Conduct was written some time ago and in light of the Localism Act 2011 it is considered necessary to update and rationalise the Code.

5 PROPOSED MEMBERS PLANNING CODE OF CONDUCT

- 5.1 The aim of this Code: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Your role as a Member of the Development Control Committee is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who has been elected to provide and implement policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised. **The guiding principle is that you should always be fair to all parties including having, and being seen to have, an open mind. When the Code applies:** this

code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

Relationship to the Code of Conduct for Members

Do apply the rules in the Council's Code of Conduct for Members first, which must always be complied with. This is both the rules on interests and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Do then apply the rules in this Members' Planning Code, which seek to explain and supplement the Code of Conduct for Members and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Code, you may put:

- the Council at risk of proceedings on the legality of the related decision or maladministration; and
- yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

Development Proposals and Personal Interests

Do disclose the existence and nature of your interest as required by the Code of Conduct for Members.

Do take into account when approaching a decision that the Principle of Integrity in the Code of Conduct for Members is defined in terms that "Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties."

It is therefore advisable that you:

Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Member. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.

Do note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a Member may place additional limitations on you in representing the proposal in which you have a personal interest.

Fettering Discretion in the Planning Process

(natural justice, predisposition and predetermination)

Don't fetter your discretion by approaching the decision with a closed mind.

Do be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

Do keep at the front of your mind that, when you come to make the decision, you are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;

You must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;

You are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;

You are only entitled to take account of material considerations and must disregard considerations irrelevant to the question and legal context at hand; and

You are to come to a decision after giving what you feel is the right weight to those material considerations and you must explain your planning reasons for doing so.

Do be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)

Do consider yourself able to take part in the debate on a proposal when you are also a member of a consultee body, for example the parish council, provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;
- you make it clear to the consultee body that you must reserve judgement and the independence to make up your own mind as and when the application comes before the Development Control Committee and you hear all of the relevant information;
- you declare your position on the consultee body at the meeting of the Development Control Committee to determine the application AND consider whether your membership of the consultee body has in any way prejudiced your ability to determine the application. If it has then you should not vote on the application but you can consider exercising your right to speak as a local ward member.

Do take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have acted as an advocate for your views or those of local electors and fettered your discretion so that you no longer have an open mind; but you do not have a disclosable or other personal conflict of interest. Where you wish to do this, you should:

- advise the Chair and officers that you wish to speak in this capacity before commencement of the item; and

- remove yourself from the seating area for members of the Committee for the duration of that item.

Contact with Applicants, Developers and Objectors

It is not necessary or practical for ‘everyday’ contact between Members and the public on planning matters to be documented. However, any significant meetings or correspondence should be subject to the provisions set out below. It is not possible in this code to define what is meant by ‘everyday’ and ‘significant’ as so many different situations could arise. Accordingly, Members must exercise their judgment. In cases of doubt, advice should be sought from the Monitoring Officer or his or her staff.

Do refer those who approach you for planning, procedural or technical advice to officers.

Do make written notes of any conversations with Applicants, Developers and Objectors and pass them to officers for inclusion on the planning file. The same applies to emails and letters.

Don’t agree to any meeting with applicants, developers or groups of objectors without first consulting with officers. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Group Manager, Development Management who will organise it. He will ensure that an officer attends. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

Don’t participate in any negotiations on behalf of the Council; these should be carried out by officers who can update Members as necessary.

Do report to the Group Manager – Development Management any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

Don’t attend a planning presentation without requesting an officer to be present.

Do ask relevant questions for the purposes of clarifying your understanding of the proposals. Where possible questions should be raised well in advance in the meeting and be directed to the Case Officer.

Do remember that the presentation is a fact finding exercise and is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning Committee.

Do be aware that whilst you may express any view on the merits or otherwise of the proposal presented, you should always make it clear that any views are personal and provisional and do not bind the Council.

Development Proposals Submitted by Members and Officers

Planning applications submitted by members, Council employees within Planning Services or someone who is privately employed in any capacity (e.g. as agent or consultant) who has direct links with the Planning Service will be considered by the Council's Development Control Committee. This ensures that the public can see that such applications are dealt with in a fair and transparent manner. Members and employees have the same rights as any other member of the public.

Do ensure that if you submit a planning application, you play no part in its consideration. If you are a member of the Development Control Committee then you should appoint an agent or representative to address the Committee on your behalf.

Do ensure that if you discuss your application with an officer, you do not seek to improperly influence their decision.

Do inform the Monitoring Officer in writing of your application.

Do treat proposals for the Council's own development with the same impartiality and transparency as those of private developers.

Lobbying of Members

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or to give such a firm point of view that it amounts to the same thing.

Do remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

Don't accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.

Do copy or pass on any lobbying correspondence you receive to the Group Manager and Case Officer at the earliest opportunity and well in advance of a relevant Development Control Committee meeting.

Do promptly refer to the Group Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

Do note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:

- listening or receiving viewpoints from residents or other interested parties;

- making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion of others in your role as a Ward Member.

Lobbying by Members

Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and therefore step away from the Committee when it comes to make its decision.

Do join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society). However, you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.

Don't excessively lobby fellow Members regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

Don't decide how to vote on any application at any political group meeting as this means that you will have made up your mind before you have heard all the competing arguments.

Site Visits/Inspections

Most planning applications can be determined on the basis of the material presented at the Committee meeting and, as site visits are resource intensive, they should only be undertaken where there are exceptional or unusual circumstances.

Do try to attend site visits organised by the Council where possible.

Don't request a site visit unless you are available to attend it and you feel it is strictly necessary because, for example:

- it is difficult to make an informed judgment without seeing the site; or
- there are specific site factors which need to be carefully addressed.

Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

Do ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

Don't hear representations from any party. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.

Don't express opinions or views to the applicant or third parties.

Don't enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias. If you

wish to observe the site on your own, you should confine yourself to viewing it from public vantage points.

Public Speaking at Meetings

Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking as this may give the appearance of bias.

Do ensure that you comply with the Council's procedures in respect of public speaking.

Officers

Don't put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Group Manager which may be incorporated into any committee report).

Do recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's and their own professional codes of conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

Decision Making

Do ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that you provide planning reasons and that the request is made in time. Members who make such requests will be expected to attend the Committee meeting.

Do come to meetings with an open mind and demonstrate that you are open-minded.

Do comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

Do come to your decision only after careful consideration of all of the relevant information. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, then request that further information is provided. If necessary, defer or refuse.

Don't vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

Don't make criticisms about the professional conduct or competence of officers in public. Any concerns should be raised with the officer's manager.

Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Where an officer recommendation is overturned, or Committee makes a decision which is contrary to policy, the mover and seconder of the motion must be prepared to give evidence at any appeal.

Do listen carefully to advice from officers concerning the prospects of successfully defending a planning decision at appeal or in Court. Where officers advise that there is a high risk of a costs award or legal challenge against the Council, members must give detailed reasons for departing from that advice which will be recorded.

Training

Don't participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

Do attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively. Attendance is compulsory and Members who are unable to attend must provide evidence of their unavailability to the Chair of the Development Control Committee.

Regular Reviews of Decisions

Do participate in the annual review of and visit to completed developments, the purpose of which is to evaluate the quality of the development and decision making.

6 CONSULTATION

6.1 Permanent and Substitute Members of the Development Control Committee have been consulted on the draft Code of Conduct. One Member has commented that 'a lot of issues, planning and otherwise, are debated on various social media, and councillors are approached constantly via these media, both as ward councillors, and members of DCC.' It is suggested that this warrants a separate section relating to a code of conduct online.

6.2 Having considered this comment it is considered that the proposed Code of Conduct applies equally to Members whether they are at a meeting, on line or using any form of written or electronic communication. Having a separate section relating to social media etc could not add anything that is not already within the draft Code.

7 RISK MANAGEMENT

7.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	<i>Mark Reynolds, Group Manager. 01225 477079</i>
Background papers	<i>Local Code of Conduct for Councillors and Officers Dealing with Planning Matters September 1998.</i>
Please contact the report author if you need to access this report in an alternative format	