

Councillors' Planning Code of Good Practice

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INTRODUCTION

The aim of this code of good practice; 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.

The key purpose of Planning; to control development in the public interest, and in accordance with national and local policies unless material considerations indicate otherwise.

Your role as a Member of the Planning Authority; to make planning decisions openly, impartially, with sound judgement and justifiable reasons.

When the Code of Good Practice applies; this code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when they attend as an observer, participant or are part of decision-making meetings of the Council in exercising the functions of the Local 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 Planning Code of Good Practice to your own circumstances you should preferably seek advice early from the Monitoring Officer well before any meeting takes place.

1. Relationship to the Waverley Code of Conduct for Members

Do apply the rules in Waverley's Code of Conduct for Members first, which must always be complied with and failure to do so could put you at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Waverley Code of Conduct for Members, a complaint being made to the Standards Committee.

Do then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Waverley Code of Conduct for Members for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put the Council at risk of proceedings on the legality or maladministration of the related decision.

2. Development Proposals and Interests under the Waverley Code of Conduct for Members

Your interest could relate to a proposal's effect on you, your employers or a member of your family or any person with whom you have a close association's property, either adverse or beneficial.

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. *(Use the disclosure form provided for disclosing interests and reference should be made in the Agenda Item headed "Disclosure of Interests").*

If you only become aware of an interest during the meeting, you must declare it as soon as you can.

Do then act accordingly, **Where your interest is personal and prejudicial:-**

Do remember that you may only attend the Committee for the purpose of making representations, answering questions or giving evidence relating to the item of business, provided the public are also allowed to attend the meeting for the same purpose.

Do leave the room as soon as you have finished addressing the Committee.

Don't try to represent Ward views. Get another ward councillor or member of the Council, if appropriate, to do so instead.

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 Councillor. This would include, where you have a personal and prejudicial 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 be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Waverley Code of Conduct for Members places greater limitations on you in representing that proposal than would apply to a normal member of the public. In particular, you should have regard to paragraph 3(2)(d) of the Code.

Do notify the **Head of Democratic and Legal Services** in writing of your interest and note that: in the case of a personal application,

Notification should be made no later than submission of the application;

Any proposed approval will always be reported to the appropriate decision-making Committee for determination and not dealt with by officers under delegated powers; and

it is advisable that you employ an agent to act on your behalf on the proposal when dealing with officers

Do ensure that when contacting an officer about your own proposals, or those of a person so closely connected to you so that the matter is a prejudicial interest, you must make clear that you are contacting the officer purely in a private capacity and not in your role as a councillor (e.g. Mr Brown not Councillor Brown)

3. **Fettering Discretion in the Planning Process.**

Planning matters must be determined on their own individual merits, against the formal planning policy background. These considerations will be set out in the officers' reports, supplemented at the meeting. Accordingly, a member who has decided how he/she will vote on a particular matter before it is considered at the meeting, let alone committed him/herself to vote in a particular manner, will be unable to determine the matter on all its own individual merits.

Don't fetter your discretion and therefore your ability to participate in planning decision-making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest of lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning committee and before hearing the officer's presentation, and evidence and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of **bias** or **pre-determination** or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

Do be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. This would particularly apply to Portfolio Holders in relation to schemes within their Portfolio area. (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 also be aware that, whilst the Waverley Code of Conduct for Members provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where -

- *you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of another local or public authority of which you are a member; or a body to which you have been appointed or nominated by the Council as its representative;*

or

- *you are a trustee or company director of the body submitting the proposal and were appointed by the Council*

In such cases you should always disclose a prejudicial as well as personal interest and withdraw from the meeting at the appropriate time.

Do consider yourself able to take part in the debate on a proposal when acting on the part of a consultee body (where you are also a member of the Town/Parish Council, for example, or both a District/Borough and County Councillor), provided that:

- the proposal does not substantially affect the well being or financial standing of the consultee body;

your views are expressed on the limited information before you only;

you reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning Committee and you hear all the relevant information; and

you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Planning Committee; and

you disclose the personal interest regarding your membership or role when the Planning Committee comes to consider the proposals.

Don't speak and vote on a proposal where you have fettered your discretion. You should withdraw.

Do explain that you do not intend to speak and vote because if you do participate, you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere. This will be recorded in the minutes – (use the disclosure form provided for disclosing interests).

4. Contact with Applicants, Developers and Objectors.

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

Don't agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. If a meeting does take place, those present at the meeting should be advised from the start that the discussions will not bind the

Council to any particular course of action. The meeting should be properly recorded on the application file and the record of the meeting should be disclosed when the application is considered by the Committee.

Do otherwise;

Ensure that you do not involve yourself in lobbying

Make notes on the form available from the Head of Democratic and Legal Services when contacted; and

Report to the Head of Planning 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.

5. Presentations by Applicants/Developers:

These are discouraged for the process of determining applications. It is the task of officers to discuss the merits of applications with applicants and to prepare professional balanced reports for councillors. Therefore, if you have received an invitation

Don't attend a planning presentation unless an officer is present and/or it has been organised by officers

Do ask relevant questions for the purposes of clarifying your understanding of the proposals.

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

Do be aware that a presentation is a form of lobbying and you must not express any strong views or state how you or other Members might vote.

6. Lobbying of Councillors

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, doing so may lead to the perception that you are unable to act impartially and therefore it may affect your ability to participate in the Committee's decision making. To express an intention to vote one way or another or to express a firm point of view, on a particular matter amounts to the same thing and could lead to legal challenge.

Do remember that your overriding duty is to the whole community of Waverley and 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.

Do remember the need for consistency in determining planning applications made for any location in the Borough

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 to the Monitoring Officer as soon as possible and remember to register the gift or hospitality where its value is over £25

Do remember that you have a personal interest in any business if it relates to or is likely to affect the interests of any person from who you have received a gift or hospitality with an estimated value of at least £25 and you would need to declare this interest at meetings for three years from the date the interest was registered.

Do copy or pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity so that it may be placed on file for consideration by other members or the public

Do promptly refer to the Head of Planning any offers made to you of planning gain or constraint of development through a proposed s.106 Planning Obligation or otherwise. Do not attempt any informal negotiation or discussion

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). The Monitoring Officer will in turn advise the appropriate officers to follow the matter up.

Do note that, unless you have a personal and prejudicial interest, you will not normally be considered to have fettered your discretion or breached this Planning Code of Good Practice through

- Listening to or receiving viewpoints from residents or other interested parties (though all parties should be given equal opportunities for access);
- Making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- Seeking information through appropriate channels; or
- Being a vehicle for the expression of opinion as a Ward Member, provided you explain your actions and make it clear that having expressed the opinion or ward view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate at the decision-making meeting.

Do remember that anyone who does not arrive from the start of a Planning meeting, is advised to not take part in debate or vote on the application as this could lead to a legal challenge that a member is closed to the merits of the arguments for or against the application and has made a decision without taking all the considerations into account.

7. Lobbying by Councillors

Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and placed yourself in a position where you have a perceived bias and are likely to have a personal and prejudicial interest and have to withdraw. Involvement in such activity before you were elected as a member could also be perceived by the public as a relevant consideration and you need to consider such possibility before taking part in a planning determination.

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, **but** disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal. Simple membership of such organisations is less likely to give rise to a personal and prejudicial interest than if you were actively involved in drafting any representation.

Don't excessively lobby fellow Councillors 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 lobby or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political group meetings should never dictate how Members should vote on a planning issue.

8. Site Visits

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

Don't request a site visit unless you feel it is strictly necessary because:

- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
- There are significant policy or precedent implications and specific site factors need to be carefully addressed.

Do ensure that any information that you gained from the site visit is reported back to the Committee, so that all Members have the same information.

Do ensure that you treat the site visit only as an opportunity to seek information and to familiarise yourself with 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 other party.

Do where you are approached by the applicant or a third party, advise them that they should make representations in writing to the Council and direct them to or inform the officer present.

Don't express opinions or views to anyone.

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. This does not mean that you can not simply observe the property or site from the roadside, but should you do so, don't be drawn into any discussion about the proposal with any party.

Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) as this may give the appearance of bias, and undermines the transparency of the decision making process.

9. Officers

Don't put pressure on officers to put forward particular recommendations. (This does not prevent you from asking questions or submitting views to the Head of Planning which may or may not be incorporated into any committee report.) This could be regarded as a Breach of the Code.

Do recognise that officers are part of a management structure and Members should only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level - in accordance with the Officer/Member Protocol.

Do recognise and observe with respect the requirement that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institutes Code of Professional 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.

10. Decision-Making

Do come to meetings and participate only if you are familiar with the written report on each item.

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

Do comply with Section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan "unless material considerations indicate otherwise".

Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. Remember that planning law requires determination to be based on planning consideration and not political or Council priorities. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information you seek. If necessary, defer or refuse.

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

Do have recorded the reasons for a proposal that the Planning Committee defers any proposal for a site visit.

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. Be aware that the resulting decision may have to be justified by evidence at a planning appeal in the event of any challenge.

Do ensure that you comply with the rules for asking for an item to be presented to committee – within three weeks following the notification of the Waverley weekly list of planning applications, as a ward councillor (for the ward including all or part of the planning application site) you can request that an item be referred to a Planning Committee on relevant planning grounds.

With Town and Parish Council support in writing, you can also, as a ward councillor, request that an application be placed on the agenda for the next Area Planning Committee.

11. 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, Code of Good Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively. This will be provided as part of the Induction process together with refresher courses.

Do participate in the annual review of a sample of planning decisions to ensure that members' judgements have been based on proper planning considerations.