

Part 5. Councillors' Planning Code of Good Practice

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Introduction

The aim of this code of good practice; Is to help Members maintain high standards of conduct and 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 for 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 and pre-application discussions. It also covers site visits by planning committee members.

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 or Deputy Monitoring Officer well before any meeting takes place or you become involved in the application process.

1. Relationship to the Waverley Members' Code of Conduct

Do apply the rules in Waverley Members' Code of Conduct first when involved with planning issues and discussions. Failure to comply could put you at risk of a complaint being made to the Monitoring Officer.

Do then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Waverley Members' Code of Conduct in relation to planning. If you do not abide by this Code of Good Practice, you may put the Council at risk of a challenge to its decisions.

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

Your interest could relate to a proposal's effect, either adverse or beneficial, on you, your employer or employee or a friend's or relative's property.

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. You should disclose your interest, preferably at the beginning of the meeting under the agenda item 'Declaration of Interests'. *Wherever possible, you should advise Democratic Services in advance of the meeting if you plan to declare an interest.*

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 a Disclosable Pecuniary Interest:

Don't try to represent your Ward views or call-in an application. Get another ward councillor or member of the Council, if appropriate, to do so instead. Under the new Code you can no longer speak if it is a public speaking item and you have a Disclosable Pecuniary Interest.

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 Disclosable Pecuniary 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 Disclosable Pecuniary 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.

Do notify the **Monitoring Officer** 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 could be seen as influencing your judgement, 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)

Do if any doubts about proximity of your own property to an application site, contact the Monitoring Officer for clarification.

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, Members' should not decide how he/she will vote on a particular matter before it is considered at the meeting, but base their decision on the officer reports, additional information presented to the meeting and the debate.

Predetermination: The Localism Act provision on pre-determination gives greater leeway for a decision-maker to directly, or indirectly, indicate a view on a matter prior to a meeting. The decision-maker must still be seen to have an open mind, but the legislation does give greater scope for councillors to represent the views of residents and vote on certain issues. You can have a very strong predisposition for or against a particular application, but you must not have predetermined the matter. This means that you must not have made your mind up prior to the meeting.

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 applicant or 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 could still 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 Disclosable Pecuniary 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 Disclosable Pecuniary Interest as well as Non-Pecuniary Interests 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 Non-Pecuniary 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 appear to have fettered your discretion. You should withdraw.

Do leave the room if there is a risk of an appearance of bias to a member of the public. You can not stay in the room and just not vote.

Do explain that you do not intend to speak or vote and will be leaving the room 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.

4. Call-in Process

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 by email to the Head of Planning that an item be referred to a Planning Committee on relevant planning grounds. **Don't** ask for an item to be referred if you have a Disclosable Pecuniary Interest or there is a risk of you being seen as biased, for example if you have a very strong connection through a non-pecuniary interest.

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. You should not do this if you have a disclosable pecuniary interest or are at risk of being seen as biased.

5. Contact with Applicants, Developers and Objectors and the Pre-Application process.

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

Don't agree to any formal meeting with applicants, developers or groups of objectors unless an Officer can attend with you. If a meeting does take place, those present at the meeting should be advised from the start that the discussions will not bind you or the Council to any particular course of action. The meeting should be properly recorded on the application file.

Do remember that when attending planning presentations or exhibitions, these are for information gathering and clarification of issues, not for expressing views or opinions.

Do otherwise:

- ensure that you do not involve yourself in lobbying

- 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.

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 too firm a 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 on the electronic form as soon as possible and remember to register the gift or hospitality where the gift value is over £50 and the hospitality is over £100.

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 up the matter.

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 note that, unless you have a Disclosable Pecuniary 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 is not present from the start of the consideration of a planning application, or leaves during one being considered, **must 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 of the relevant 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 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 a possibility before taking part in a planning determination.

Do feel free to 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 non-pecuniary interest than if you were actively involved in drafting any representation or held an office such as Chairman or Vice-Chairman.

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 request a site visit prior to the Committee taking place in accordance with the site visit protocol.

Do try to attend site visits organised by the Council where possible, but do not attend if you have a disclosable pecuniary interest or there is a risk of the appearance of bias. .

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 but factual information can be sought for clarification.

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 involve yourself in pre-application discussions with the case officer but 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 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 Institute's 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. Pre-Application discussions

Councillors have an important role to play in pre-application discussions. The Localism Act has given Councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that Councillors might have fettered their discretion, such discussions should take place within clear published guidelines.

Do ensure Officers are present with you in pre-application meetings. If you do speak to applicants do ensure clarity that the discussions will not bind the Council to making a particular decision and you should avoid giving separate advice on the development plan or material considerations without officers in attendance. In any case, a written note should be made of all meetings.

Do note that the Council has other mechanisms to involve you in pre-application discussions such as developer presentations to Committees (e.g. technical briefings and Development Control Consultative Forums) which have the advantage of being held in public for transparency.

11. 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 38(6) 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 the further information you seek. If necessary, defer or refuse.

Don't vote or take part in the meeting's discussions on an item 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.

12. 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 training and other specialised sessions provided, to ensure that members' judgements have been based on proper planning considerations. 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.

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