

BERKHAMSTED TOWN COUNCIL PLANNING CODE OF PRACTICE

Appendix 3 (a) of Standing Orders

1. Purpose of this Code

1.1 This code has been prepared for town councillors to follow when dealing with planning-related matters. It is based on a document prepared by DBC's legal team in its corporate and Contracted Services department and supplements the information contained in the Town Council's Code of Conduct first adopted in July 2012 by providing more detailed guidance on the standards of behaviour required. It has been drawn up in accordance with Section 28 of The Localism Act 2011 and also serves to inform potential developers and the public generally of the standards adopted by the Town Council in relation to planning applications and all associated planning matters. By following the Planning Code of Conduct town councillors will be seen as being impartial, accountable and transparent in their conduct.

1.2 Such conduct must be based on the Seven Principles of Public Life (the 'Nolan principles') as set out in section 28 of the Localism Acts and below:

- (a) selflessness;
- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.

1.3 Relationship to the Code of Conduct

1.3.1 Councillors should apply the rules in the Code of Conduct first, which must always be complied with, including the rules on personal and prejudicial interests, disclosable pecuniary Interests and the seven principles of public life set out above.

1.3.2 Councillors should then apply the rules in this Planning Code of Practice, which seek to explain and supplement the Councillors' Code of Conduct and the law on decision-making for the purposes of planning. Failure to abide by this Planning Code of Practice may:

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- 1.3.3 Risk the council being challenged in the law courts; and
- 1.3.4 Put individual councillors at risk of a complaint being made to the Town Council or Monitoring Officer/Standards Committee for breach of the Code of Conduct. A complaint could be made to the police to consider criminal proceedings in relation to failure to disclose a Disclosable Pecuniary Interest.

2. The Role of Town and Parish Councillors

- 2.1 In considering planning applications/related matters and submitting Town Council's representations to the Borough Council Councillors shall:
 - 2.1.1 act fairly, openly and impartially;
 - 2.1.2 avoid inappropriate contact with interested parties;
 - 2.1.3 approach each application with an open mind;
 - 2.1.4 carefully weigh up all the material planning considerations;
 - 2.1.5 determine each application on its own merits in accordance with the provisions of the Development Plan and other material planning considerations;
 - 2.1.6 demonstrate sound judgement and ensure that valid, evidenced and justifiable reasons for decisions are clearly stated;
 - 2.1.7 vote as they consider appropriate and not along party lines.
- 2.2 Party political considerations shall play no part in deliberations. Councillors shall at all times be respectful to the Chair of the Committee and to each other and to officers and members of the public including applicants, agents, objectors and Councillors of other Councils.
- 2.3 Councillors shall not attempt to place any pressure on officers of the Borough Council in order to influence the terms of a report and/or secure a particular recommendation on any planning matter.
- 2.4 Councillors shall ensure that all correspondence (including emails) with officers, applicants and objectors are written using language which is professional and respectful. Councillors are reminded that all

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correspondence is potentially disclosable to the public pursuant to a freedom of information request.

- 2.5 Councillors shall not use, or attempt to use, their position improperly to the advantage or disadvantage of themselves or anyone else.

3. Lobbying

- 3.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward or Town/Parish Councillor or to a Councillor of the planning committee. As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves". Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.
- 3.2 It remains good practice that, when being lobbied, councillors (Councillors of the Town and Parish Council's Planning Committee in particular) should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the relevant evidence and arguments.
- 3.3 Planning applications will be processed and determined in a transparently open and fair manner, in which Councillors taking the decision will take account of all the evidence presented before arriving at a decision. Councillors need to be mindful that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality.
- 3.4 To avoid compromising their position before receiving all the relevant information and hearing all the relevant evidence and arguments, Councillors shall:
- 3.4.1 not determine in advance of the consideration of the application by Committee whether they support or oppose a proposal unless they accept that this will mean that they may not take part in the decision. See paragraphs 3.5, 4.1 and 4.2 below.

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- 3.4.2 restrict themselves to giving procedural advice, such as advising lobbyists to write to the relevant case officer and/or avail themselves of the public participation process;
- 3.4.3 explain they will only be in a position to make a final decision after having received all the relevant information and having heard all the relevant evidence and arguments at the Committee meeting itself;
- 3.4.4 advise the Monitoring Officer, vis the Town Clerk, promptly of the existence of any lobbying activities or approaches which are felt by the Councillor to be undue or excessive
- 3.4.5 explain to those lobbying or attempting to lobby that, whilst they can listen to what is said, it may subsequently prejudice their impartiality, and therefore their ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or confirm a clear point of view.
- 3.4.6 not 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.

3.5 Lobbying by Councillors:

- 3.5.1 Councillors shall not 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 will therefore step away from the Planning Committee when it comes to make its decision.
- 3.5.2 Councillors may join general interest groups which reflect their 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 should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
- 3.5.3 Councillors shall not lobby fellow councillors regarding their concerns or views nor attempt to persuade them that they should

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decide how to vote in advance of the meeting at which any planning decision is to be taken.

- 3.5.4 Councillors shall not decide or discuss how to vote on any application at any political group meeting, or lobby any other committee Councillor to do so. Political Group Meetings should never dictate how committee Councillors should vote on a planning issue.

4. Committee Meetings

When approaching a decision Councillors shall be mindful that the Principle of Integrity is defined in terms that:

“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships”.

4.1 Declaration of Interests

- 4.1.1 The responsibility for declaring an interest lies with the individual Councillor.
- 4.1.2 Councillors of the Planning Committee shall declare disclosable pecuniary interests and personal and prejudicial interests in planning matters in accordance with the Code of Conduct.
- 4.1.3 Where a personal interest arises because a councillor is a Councillor of, or is in a position of control or management in, a body to which s/he was appointed or nominated by the Council or which exercises functions of a public nature, s/he need only declare the personal interest if and when s/he addresses the Committee on that item (unless s/he also has a prejudicial interest).
- 4.1.4 A Councillor with a disclosable pecuniary interest or a prejudicial interest shall declare it and move to the public seating area. Provided the Councillor has registered to make representations under the rules applicable to public participation, the Councillor shall be entitled to take a seat in the place set aside for public participation and shall then follow the rules for such participation.

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4.1.5 In addition, a Councillor shall not seek improperly to influence a decision in which s/he has a disclosable pecuniary interest or a prejudicial interest.

4.1.6 Councillors who have business or other interests which may bring them into contact with the Borough Council's planning system on a regular basis should not be considered for Councillorship of the Planning Committee.

4.2 Predisposition, Predetermination and Bias.

4.2.1 A Councillor is entitled to be predisposed about a particular matter. Predisposition is where a Councillor holds what may be termed a preliminary, or provisional, view and may have expressed such view publicly and, indeed, been elected upon the strength of it. Such comments have an added measure of protection under the Localism Act 2011. The critical point is that the Councillor must have an open mind in relation to all the relevant information, evidence and arguments when participating in the planning process and be prepared to reconsider their position in the light of all the relevant information, evidence and arguments.

4.2.2 If a Councillor is not prepared to be open-minded and to consider all the relevant information, evidence and arguments relating to a particular matter, or in any way gives the *appearance* of having decided in advance what stance to take at the meeting, that Councillor may be considered to have predetermined the matter or to be biased in relation to it.

4.2.3 If a Councillor of the Committee has compromised his or her position by expressing views which indicate that he or she has already made up his or her mind on an issue before receiving all the relevant information and hearing all the relevant evidence and arguments, that Councillor shall make a declaration to that effect and take no part in the discussion, voting or decision.

4.3 Any Councillor in any doubt about the declaration of interests or predetermination should seek the advice of their town or parish clerk or the Council's Monitoring Officer or Deputy Monitoring Officer.

4.4 Councillors shall:

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- 4.4.1 come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If they feel there is insufficient time to digest new information or that there is simply insufficient information before them, request that further information. If necessary, defer or refuse.
- 4.4.2 not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the officer's introduction to the matter.
- 4.4.3 not allow members of the public to communicate with them during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- 4.4.4 ensure that they comply with the Council's procedures in respect of public speaking.

5. Planning Committee Councillors who serve on Borough Councils

- 5.1 Some Parish or Town Councillors will also be Councillors of Borough Councils. This situation can present problems where the Parish or Town Council is consulted on planning applications, which are then determined by the Borough Council. This is often the stage when Councillors come under pressure to indicate their support or objection in respect of a particular proposal. Of particular concern is the potential for a conflict of interest arising when a Councillor of both Councils votes on an application at a Parish or Town meeting prior to the relevant Borough Development Management Committee meeting. It would be quite conceivable that a Councillor in this position could end up voting in a different way when all the relevant information, evidence and arguments are made available at the Borough Committee meeting.
- 5.2 In order to avoid any potential conflict, it would be preferable for Borough Councillors not to serve on a Parish or Town Council's Planning Committee. If they cannot avoid that, and if they wish to participate in the Borough Committee's deliberations, they shall not vote or say anything which would create the impression that they have already made up their minds prior to the relevant Borough Committee meeting. In this way they will avoid being part of the formal process of submitting representations on planning applications to the Borough Council and so demonstrate their impartiality. To avoid any challenge, those Councillors who have

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expressed a definite view on an application and/or have voted shall act as indicated under 3.5, 4.1 and 4.2 above

6. Site Visits

- 6.1 Site visits can be helpful in identifying features of a proposal which may be difficult to convey in a written report and are acceptable as long as the guidance set out below is followed:
- 6.2 All Councillors who attend a site visit do so on the understanding that such visits:
 - 6.2.1 are fact finding exercises;
 - 6.2.2 are not part of the formal consideration of an application
 - 6.2.3 should be from a public vantage point in the first instance if this enables a sufficient view of the site, and only if the consent of the landowner is received should the Councillor enter onto the development site.
 - 6.2.4 No discussion of the merits of an application shall take place on site and no lobbying/objection shall be permitted;
 - 6.2.5 No opinions or views should be expressed as to the merits or demerits of the application.
- 6.3 Councillors should ensure that they report back to the Committee any information gained from the site visit that they feel would benefit all Councillors of the committee.

7. Training

- 7.1 Councillors on the Town Planning Committee shall undergo planning induction training and attend refresher training at regular intervals thereafter. Failure by a Councillor to attend formal induction training will disqualify that Councillor from sitting on the Committee. Failure to attend formal refresher training may result in a recommendation to Full Council for the removal of a Councillor or Councillors from the Town Planning Committee. The Town or Parish Clerk in consultation with the Chairman of Planning Committee, shall formally review Councillors' training needs

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and monitor whether all training requirements have been met on an annual basis.

Above Code of Practice agreed at TP 21-01-19 and minutes adopted at Full Council on 28-01-19. Code to be reviewed in future following advice from DBC's legal team, NALC and/or changes in legislation.