

M Procedural Guidance for Members and Officers in Planning and Licensing – Supplemental to the Code of Conduct

This Guidance was adopted by the Council on 25 April 2002, amended on 11 December 2003, and supplements the Code of Conduct for members of the Council adopted by the Council under Section 51 of the Local Government Act 2000. The obligations and responsibilities contained within this Guidance shall apply to co-opted members in the same way as they do to members of the Council. Reference to the committee means the Planning Committee or the Licensing Committee and reference to the Chairman shall mean the Chairman of the relevant committee. Similarly, reference to the Chief Officer means an Executive Director or appropriate Corporate Manager and reference to the 'officer' means the planning case officer or the licensing officer respectively.

Members

The Role of Members

1. In making decisions on applications, members of the committee will:
 - act fairly and openly
 - approach each application with an open mind
 - carefully weigh up all the material considerations
 - avoid undue contact with interested parties
 - ensure that reasons for decisions are clearly stated.
2. Members of the committee will be free to vote on applications as they consider appropriate (i.e., without a Party 'whip'), deciding them in the light of all the relevant information, evidence and arguments. They will base their decisions on the provisions of the Acts and regulations under which the applications are made and fall to be determined ("the statutory framework").
3. Members of the Council shall not give instructions to officers nor shall they place pressure on officers in order to secure a particular recommendation on an application.
4. In accordance with paragraph 6 of the Code of the Conduct for Members of the Council, a member will not use his or her position as a member improperly to confer or secure for himself or herself, or for any other person, an advantage or disadvantage.

Discussions with Applicants

5. Pre-application meetings with prospective applicants are encouraged, but, to avoid misunderstandings, they require a degree of formality. They will normally only involve officers, except where the Monitoring Officer, in consultation with the Chairman of the committee, has agreed that a pre-application meeting shall include (along with an appropriate officer) a member or members of the Council.
6. It will be made clear at pre-application meetings that:
 - only officers' initial provisional views can be given, based on the provisions of the statutory framework and other adopted Council policy
 - no decisions can be made which would bind or otherwise compromise the committee of the Council or the Chief Officer if delegated to make the decision.
7. Where pre-application meetings involve a prospective applicant with a member or members of the Council, a note of the discussion will be taken by the officer and will be made available for public inspection, subject to the usual rules about access to information, if and when an application is submitted. At least one appropriate officer will be present at all such meetings.

8. Members of the Council will not take part in post-submission meetings with applicants or other parties, unless the matter has been agreed by the Monitoring Officer, in consultation with the Chairman of the committee. A note of any discussions will be taken and will be made available for public inspection, subject to the usual rules about access to information. At least one appropriate Planning Officer will be present at all such meetings.

Lobbying

9. It is quite common for applicants and others to wish to approach members of the Council to discuss a proposed application before an application is submitted or, if submitted, determined. This could be by way of an approach to an individual member, by telephone, or on a chance meeting, or by way of a request to see all or some of the members of the committee. It is an essential part of the democratic process that members of the public should be able to make their views known to elected members. However, to avoid compromising their position before they have received all the relevant information, evidence and arguments, members of the committee will:
- do their best to avoid, in discussion with an applicant or any other person, giving their thoughts about the merits of an application or proposal so as to give the impression or commitment that they will definitely vote in favour or against a proposal or application. There is no objection to the member rehearsing comments from the officer or any of the consultees, whether in favour of or against the proposal or application or any aspect of it and the member can express his or her own reservations to give the proposer or applicant an opportunity of addressing them. The member can give an indication **on the information then available to him or her** whether he or she supports or opposes but it would be wise to ensure beforehand that he or she is fully briefed, preferably by the officer;
 - apart from the above, restrict their response to giving procedural advice, and make it clear that that is all they are prepared to do;
 - in suitable cases, direct lobbyists or objectors to the officer; and
 - advise the Chief Officer as soon as possible of the existence of any substantial or abnormal lobbying activity.
10. Whilst there is no bar on members of the Council generally expressing publicly, even robustly, their views on any application, committee members will recognise the need to determine applications as a committee taking into account all material considerations at the time the application falls to be determined. Members of the committee therefore should be careful not to express publicly a final¹ view on an application prior to the meeting of the committee at which a decision is to be taken however strongly they feel.

Site Visits

11. All sites are visited by officers as part of the application process. A site visit by the committee should only be necessary if the impact of the proposed development or proposed licence is difficult to visualise from the plans submitted, the written report and the officer presentation to committee. Whilst site visits involve delay in determining the applications concerned and additional cost, they should be considered if they are likely to inform better the judgement of members of the committee concerning the potential impact of proposals on, e.g., the neighbours, the countryside, the setting of a listed building or on the conservation area, i.e., where important aesthetic judgements fall to be made, the safety of road users and pedestrians, crime and disorder.

1 "Final" here means that that member's mind is already made up, i.e., clearly pre-determined by the member such that he or she is not simply presently in favour of or against an application on the facts and circumstances then known to that member but that he or she will not be open to future argument or representations when the application falls to be considered by the committee when all the facts are known, all consultation responses are in hand and all committee debate has taken place. This can include, for example, an expression by a member of the committee that he or she as a matter of principle or conviction never votes in favour of – or against – [the type of activity or proposal in the application].

12. A decision to inspect a site will normally be arrived at either by the officer or at the request of a local member or the Chairman **in advance of any committee consideration**. Members should try to avoid proposing at the meeting itself a deferment for a site visit, although there may be exceptions where the need for a site visit becomes apparent only during the debate and consideration of the appropriate application at a committee meeting.
13. If access to private land is necessary for a site visit by members of the committee, officers will secure the prior agreement of the landowner, explaining that members will not hear argument from any interested party while at the site.
14. Where a site visit has been agreed by the committee, all members of the committee are encouraged to attend, accompanied by appropriate officers. The local member, if not a member of the committee, will also be invited.
15. The purpose of the site visit is fact finding. Officers will be able to point out relevant features of the site and surroundings. Members will be able to see the physical features of the site and ask questions through the Chairman or the officer to seek clarification. A written record will be kept of the site visit by the officer and will be reported as part of the committee papers where the application falls to be determined.
16. No discussion of the merits of the case will be permitted and all questions from members will be put through the Chairman or officer.
17. The site visit is not part of the formal consideration of an application and therefore public rights to attend the meeting do not apply. No interested parties or local Parish councillor (who is not also the local district councillor or a member of the committee) will be permitted to attend.
18. The visiting party will stay together as a group. No lobbying by applicants or objectors who might be present will be allowed. If an applicant or group persists in attempting to lobby, all members and officers will leave the site and the site visit will be abandoned.
19. The members of the committee when on site visits should not make any comments that could create an impression if observed by an outside party that they had already formed a view on the merits of the application. No decision on the application shall be made until the formal meeting of the committee at which the application is to be considered, when members will have before them all necessary information to be able to make an informed decision. Members are encouraged to convey at the formal meeting all the relevant conclusions they themselves reached on any site visit to help inform the decision.
20. If a member finds it necessary to visit a site alone (perhaps because it was not possible for him or her to attend a committee visit), the member should view the site only from public vantage points, seek to avoid any discussion with interested parties, and, if there is such discussion, make it clear that no decision on the application will be taken until it has been discussed at committee.

Material Submitted to Committee

21. A member of the Council receiving apparently new material in writing from or on behalf of an applicant or third party in connection with an application before the committee should establish from the officer whether the material has been received by that officer unless it is clear from the document itself that the officer already has it or has been sent a copy. If it has not, the member should make it available as soon as possible to the officer.
22. Relevant documents in connection with an application should all be dealt with in the officer's report to committee. Any additional information received after the preparation of that report up to 1530 hours on the day before the committee meeting will normally also be

brought to the attention of the committee. Except when requested by the officer, papers received after that time will usually be discounted, since time will not be available to check their accuracy or to give consideration to their implications. Even papers received before that time may not be able to be included in the officer's oral report if they are complex or raise important new points. In such cases, the right course may be to defer the consideration of the application to another meeting.

Declarations of Interests at Committee

23. Licensing Committee

Breach of the rules as to disclosure of interests has a more serious consequence for this committee, due to its quasi-judicial nature. In order to fully adhere to the rules of natural justice and the requirements of the Human Rights Act 1998 the committee has adopted the policy that a member should not sit or vote on any item within their **ward**. Members can address the committee from the public gallery or seats on that item but take no further part in the process. Quite apart from this, if an application is inside or outside the ward of a member, he or she may have a personal interest which may or may not be prejudicial. If so, the provisions of paragraphs 24 to 29 equally apply.

24. Planning Committee

Members should declare any interests in applications coming before the committee immediately prior to the relevant item on the agenda. In order to be able to do that, they are encouraged to seek advice at an early stage from relevant officers of the Council in any situation of uncertainty. If for some reason it is not possible, however, for an interest to be declared by a member at the outset of a meeting, or if it becomes clear at a later stage during the meeting that a member has an interest in an item under discussion, then the member should declare that interest at the first opportunity.

25. Sometimes, it is not clear whether a member has a declarable personal interest² or, if so, whether that interest is prejudicial³. As a general guide the following should be adopted by the member as being prejudicial although each case should be considered on its merits:

- (a) If the site adjoins property owned or occupied by the member or one of his / her family or a friend or is nearby such that any significant impact of view or amenity is likely whether good or bad; 'nearby' in this context can mean on the opposite side of a road. Impact which is not likely to be considered as 'significant' and not therefore prejudicial may nevertheless be declarable as a personal interest
- (b) If the member is a farmer who owns or occupies land in the parish (other than the member's own home) and the proposal is for development of, or public entertainment in, farm buildings or diversification proposals or other property development in the same parish or nearby
- (c) If the member is an architect, solicitor, estate agent, surveyor, builder or otherwise connected with or likely to be connected with development which falls to be considered by committee. Members practising in development trades or professions are advised not to be members of the Planning Committee.
- (d) If the member is employed or engaged in the same discipline relevant to any licensing application.

2 Might the matter be reasonably regarded as affecting the well-being or financial position of you, your family or any of your friends or your or their interests or businesses to a greater extent than other inhabitants? [**PERSONAL INTEREST**]

3 Is your declared interest one which a member of the public, with knowledge of the relevant **facts**, would reasonably regard as so significant that your interest is likely to prejudice your judgement of the public interest? [**PREJUDICIAL INTEREST**]

26. When declaring an interest, a member should specify the nature of the interest, and whether it is personal or prejudicial. It is the responsibility of the member to announce clearly to those present that an interest is being declared and why. The minutes of the meeting should record what type of declaration was made by any member.
27. If a member declares a prejudicial interest, he or she shall withdraw from the meeting, having made any representations, before the matter concerned is discussed (Paragraph 12 of the Members' Code of Conduct refers). Withdrawal from the meeting involves physically leaving the meeting room. Moving to the public gallery or seats is not sufficient. The Chairman of the committee should suspend the proceedings of the committee briefly while the member leaves the committee room.
28. Where a member leaves the meeting, or intends to do so some time before an interest would otherwise be declarable at a later stage of that meeting, it is the responsibility of that member before he or she leaves the meeting, to announce the existence and nature of that interest, which should then be recorded in the minutes.
29. Where a member has a dispensation granted by any appropriate person or body allowing him or her to speak and / or vote on a matter in respect of which a prejudicial interest has been declared, that dispensation shall apply also to this Guidance.

Members of Committee who serve on County Councils and Parish Councils

30. A member may also serve as a member of the County Council or of a parish council ('dual' member) which makes representations about an application to be considered by the committee. If the member is present at a meeting of the County Council or a parish council (or one of its committees) when the attitude of the County Council or that parish council to the application is under consideration, the member should make this known when the application concerned is under discussion at the committee.
31. A local member who is also a member of the parish council may, if appointed to do so by the parish council concerned, act as the parish council's representative at a Licensing Committee (unless that member is on the Licensing Committee panel determining the application) or under the protocol which allows parish council representatives to address the Planning Committee. In such event, the member should make it clear whether he or she is addressing the committee as parish council representative only or as representative **and** on his or her own behalf because it is not a requirement that the views of each, upon the application, should be the same.

Voting at Committee

32. (a) A member of the committee should only vote on an application before the committee if he or she has been present for the whole of the presentation of and discussion on the application.
- (b) Where an application has been the subject of a site visit, any member of the Planning Committee who has not attended the site visit should consider, before deciding whether or not to vote on the application, whether they are sufficiently informed about all relevant issues. If they are not, they should not vote.

Non-members of Committee attending Committee Meetings

33. (a) Members of the Council who are not members of the committee may attend meetings of that committee and speak (subject to the law on declarations of interest) **but not vote** on items under the procedure laid down in Council Procedure Rules, whether as a ward councillor, or to represent the views of the County Council or a parish council, or otherwise.
- (b) When such members attend the Licensing Committee they shall sit with the visiting public or persons wishing to make representations. When such members attend the Planning Committee, they should not sit in the public gallery, but in the place

- reserved in the committee room for Members of the Council who are not members of the Planning Committee.
- (c) When such a member speaks at the meeting, either the Chairman of the committee in calling upon the member to speak or the member in speaking should make it clear upon what basis he or she is taking part in the meeting. The guidance in paragraph 29 regarding committee members who are 'dual' members should also be observed by other members of the Council who attend meetings of the committee.
 - (d) Where a member not a member of the committee is attending to speak as the local member, he or she should be identified and may be asked to speak before any other member makes a contribution to the debate.
 - (e) Unless specifically allowed by the Chairman, members who are neither members of the committee nor the local member should not contribute to the debate on applications in other wards unless they have information to impart that will assist the committee in making a decision.

Decisions Contrary to Officer Recommendations or to Development Plan Policies

- 34. From time to time, there will be occasions when the committee disagree with the professional advice on an application given by the Chief Officer. In such cases the reasons for differing from the professional advice received should be specified in the resolution of the committee, along with the reasons for refusing an application recommended for approval or the conditions to be imposed on any approval in a case recommended by officers for refusal. The same provisions apply to relevant decisions taken contrary to Development Plan policies.
- 35. Where any Planning Committee decision is taken to refuse an application contrary to the recommendation by the officers for approval (with or without conditions), it shall normally be expected that a member, preferably the local member, speaking and / or voting against the application, will offer himself or herself to give evidence to support the grounds of refusal at any appeal hearing or inquiry. The Chairman will deal with this point before moving to the next item of business.
- 36. Where Planning Committee is minded to make a decision contrary to technical advice, its final decision should not be made until it has received, and taken into account, credible second opinion which will be obtained for their consideration by the Corporate Manager (Planning and New Communities).

Applications in which a Member of the Council has an interest

- 37. All applications which are submitted by or on behalf of a member of the Council in his or her private capacity or by a close friend, relative or the partner of a member (as defined in the Code of Conduct for Members) will be drawn to the attention of the Chief Officer by the member concerned in writing, and will be reported to the committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to Officers.
- 38. The member concerned will take no part in the determination of the application.

Hospitality

- 39. Members of the Council are discouraged from receiving hospitality from people with an interest in a proposal. If receipt of hospitality is unavoidable, members will ensure that it is of the minimum level, and if it exceeds the level to which the Council's Code of Conduct for Members applies, will declare its receipt, as soon as possible, in a hospitality book which is retained by the Council's Deputy Monitoring Officer.

Training

- 40. (a) Training on development control and development plan issues and procedures will be provided and updated as necessary. All members of the Planning Committee should ensure that they have received sufficient and appropriate training to enable

them to undertake the duties required of them. Training is mandatory for members who wish to sit on the Planning Committee.

- (b) All new members of the Licensing Committee will be required to receive training in licensing procedures at the beginning of their term of office and all members of the committee will be required to undertake training periodically on new regulations and as a refresher. A record will be kept by the Chief Officer of the training undertaken by each member. Training is mandatory for members who wish to sit on the Licensing Committee

Whistle-blowing

41. A member or any officer must, if he or she becomes aware of any conduct by another member or any officer which he or she reasonably believes involves a failure to comply with this Guidance, notify the Monitoring Officer as soon as it is practicable for him or her to do so.

Officers

The Role of Officers

42. In making delegated decisions on applications, officers will:
- act fairly and openly
 - approach each application with an open mind
 - carefully weigh up all the material considerations
 - avoid undue contact with interested parties
 - ensure that reasons for decisions are clearly stated.
43. In reporting to committee on non-delegated applications, officers will:
- provide professional and impartial advice
 - make sure that all information necessary for a decision to be made is given
 - set the application in the context of the statutory framework and all other material considerations
 - include the substance of objections and the views of people who have been consulted
 - provide a clear and accurate written analysis of the issues
 - normally give a clear recommendation.
44. Any material information which is received after the written report has been prepared and before the cut off time specified in paragraph 21 above will be presented orally to the committee by officers.
45. The Chief Officer, in discussion with the Chairman of the committee, will have the discretion to withdraw any item from the agenda of the committee subsequent to the preparation of the report but prior to discussion by the committee if the circumstances of the consideration of an application change within that period.
46. Officers are responsible for carrying out the decisions of the committee whether or not those decisions are in line with officer recommendations.

Discussions concerning Applications

47. All officers taking part in pre application or post submission discussions with applicants, supporters or objectors should make it clear that decisions on applications are taken either:
- by the elected members in committee, or
 - under specific circumstances by the Chief Officer or an officer specified by him / her using powers of delegation.
48. A written note will be made of all such meetings. A follow-up letter should be sent setting out the advice given at such a meeting and the basis on which it was given. The meeting note and any follow-up correspondence should be placed on the application file, should an application materialise following initial discussions.

Disclosures of Interest

49. Officers (of every grade) shall play no part in the processing of any application in circumstances where there is, or would be perceived by a reasonable person with knowledge of the relevant facts to be, a conflict between their personal or financial interests, or those of their families or friends, and their professional duty. They shall openly declare the existence of any such conflict in writing by placing a note of the circumstances of the interest on the case file.

Applications Submitted by Officers

50. All applications submitted in respect of which any officer has an interest shall be reported to the committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to officers. If the officer concerned is present at the meeting of the committee at which such an application is determined, he or she will leave the room during consideration of the application.

Hospitality

51. Officers are discouraged from receiving hospitality from people with an interest in a proposal. If receipt of hospitality is unavoidable, officers will ensure that it is of the minimum level, and will declare its receipt if it exceeds the level to which the Council's Code of Conduct for Officers applies, as soon as possible, in a hospitality book which is retained by the Council's Deputy Monitoring Officer.

Action on Decisions Taken Contrary to Professional Advice

52. In cases where an officer recommendation for approval has been overturned by committee and an appeal is lodged:
- case officers shall give full support to members and any external witnesses in preparing evidence for any court proceedings or public inquiry, short of giving evidence themselves. Whilst members' decisions giving rise to appeals will always have officer support, whether by the Appeals Officer, Legal Officer, Environmental Health Officer or any other officer(s) selected by the appropriate Chief Officer, case officers involved in formulating the original recommendation will only give evidence themselves in exceptional circumstances, where their Code of Professional Conduct is not breached
 - where a hearing is to be held, with no cross examination, the case officer may give evidence, but this will normally be an officer not involved in formulating the original recommendation
 - officers shall give full support to member decisions which are appealed using the written representations procedures.

General

53. This Guidance shall be kept under continuous review by the Standards Committee and also reviewed whenever there is any change in the Council's Procedure Rules or the Council's Code of Conduct for Members or for Officers.