



HERTFORDSHIRE COUNTY COUNCIL CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS INVOLVED IN THE PLANNING PROCESS

Preamble

This is a local Code, which has been prepared in order to set out clearly the way in which the County Council will process the planning applications it determines. It is to be emphasised that most of this Code is a formalising of current practices and procedures within the County Council and is a reflection of the excellent working relationship between members and officers. The Code applies to both councillors ("members") and officers who become involved in operating the planning system.

1. Basic premises

- 1.1 The basis of the planning system is the consideration of private proposals against wider public interests.
- 1.2 When reaching a decision on a planning application members shall have regard only to material planning considerations and shall disregard all irrelevant considerations.
- 1.3 The successful operation of the planning system relies on ensuring that officers and members act in a way which is not only fair but is clearly seen to be so.
- 1.4 Members have a special duty to their ward constituents, but their overriding duty is to the whole community of Hertfordshire. They should vote in the interests of the whole county in relation to planning matters. However, there is no reason why a local member should not participate in the decision making process for a particular planning application, provided that they have abided by the Code (see paragraph 5.2).
- 1.5 Instructions to officers may only be given through a Council or Committee decision.
- 1.6 Unless given clear delegations by members to act on behalf of the authority, officers can only advise.
- 1.7 Members should not put undue pressure on officers for a particular recommendation with regard to planning matters.
- 1.8 The County Council endorses the Royal Town Planning Institute (RTPI) Code of Professional Conduct, and in particular the requirement that officers who are RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. Officers who are not

RTPI members shall comply with the RTPI Code as if they were and members should accept this requirement as applying to all officers in the authority advising on planning matters.

- 1.9 Planning applications submitted by the County Council for its own development will be treated in the same way as those for private developers, both in terms of procedures and the assessment of material planning considerations.
- 1.10 In this Code of Practice all references to “the Committee” mean the Development Control Committee.

2. Training

- 2.1 Basic training on the planning process will be made available at convenient times for all members of the County Council and in particular those serving on the Committee.
- 2.2 All members serving on the Committee including substitute members shall have undertaken at least basic training on the planning process prior to serving on the Committee.
- 2.3 Full training at convenient times for members of the Committee will be arranged within 3 months of any member being appointed to the Committee.
- 2.4 Refresher training for all members of the Committee will be held on an annual basis.

3. Pre-Application / Post-Submission Discussions

- 3.1 Members of the Committee should preserve their impartiality as decision-makers and not normally take part in pre-application or post-submission discussions with developers or other interested parties regarding development proposals.
- 3.2 In those exceptional circumstances where members do attend such meetings, they should be structured, with an officer always in attendance and a note taken of the meeting. Where possible, meetings should ensure that representatives of both proposers and objectors should be allowed to present their views through structured meetings.
- 3.3 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision.

4. Site Visits

- 4.1 Formal site visits will be held where there is a clearly identified benefit from holding one, and a record will be kept of why visits are being held and who attended. This will usually be when a proposal is contentious or particularly

complex, and the impact is difficult to visualise or assess from the submitted information and plans.

- 4.2 The need for a site visit will be determined by the Committee Spokesmen in advance of the proposal being considered by the Committee.
- 4.3 All members of the Committee will be invited to attend the site visit, together with the local member(s). Where a proposal would have a significant impact on an adjoining division or divisions the adjoining local member(s) will also be invited.
- 4.4 All members attending site visits should be accompanied by an officer.
- 4.5 If access to private land is necessary, then officers will secure the prior agreement of the landowner / operator. Once on the site, then the landowner / operator / applicant will be advised that only factual answers or information should be given and that lobbying will be unacceptable.
- 4.6 The relevant district and parish councils will be notified of any site visits, and invited to attend (subject to the landowner's agreement).

5. Lobbying

- 5.1 **All members of the Committee shall avoid expressing an opinion which may be taken as having reached a conclusion or otherwise committing the authority on a planning application until all the relevant information, evidence and arguments have been put before them at a meeting of the Committee.**
- 5.2 Local members who are also members of the Committee shall be free to participate in the decision making, provided they have abided by the provisions of this Code of Practice. Where they feel it is appropriate to do so, they may give support to a particular body of opinion in advance of Committee, provided it is clear that they will not reach a final view on the proposal until such time as all the relevant information, evidence and arguments have been put before them.
- 5.3 Any member of the Committee who wishes to express publicly a final view on a planning application prior to the Committee meeting at which a decision is to be taken will declare an interest and not vote on that particular agenda item. The member may still address the Committee on the same basis as a local member.
- 5.4 Members of the Committee shall not organise support or opposition for a proposal or lobby other members (other than when addressing the Committee).
- 5.5 Local members who are not members of the Committee may give support to a particular body of opinion in advance of the Committee meeting at which the proposal is to be considered. However, it is advisable to wait until the Committee meeting when all the evidence is heard before reaching a view.

- 5.6 Where a planning application or item of business before the Development Control Committee relates to a matter which has previously been considered by a district council or parish council on which members of the Development Control Committee also serve, those members may have a prejudicial interest under the local Code of Conduct for Councillors (referred to in Section 9). Those members will be entitled under the local Code of Conduct to remain, speak and vote provided they have declared their interest and provided their interest at district/parish level has not been such as to indicate that their view on the application has been predetermined. Such members may however choose in any particular case to withdraw because they feel their interest is so significant. Such members must have scrupulously avoided forming a fixed view on the issue in advance of Committee. If, for example, a member was on the district council's planning committee which considered the application and came to a view on it, then that member should not participate in respect of that application at the Development Control Committee.
- 5.7 In accordance with the local Code of Conduct for Councillors, members should avoid placing themselves in a position that could lead to the public thinking they are receiving preferential treatment for themselves, for friends or relatives or any firm or body with which they are personally connected. Examples include using their position to discuss a planning application personally with officers when other members of the public would not have the opportunity to do so.

6. Officer Reports to Committee

- 6.1 The Committee papers will normally be available at least 7 working days prior to the meeting.
- 6.2 All applications submitted to the Committee for consideration will have a full written report from officers including a reasoned assessment of the proposal and a justified recommendation.
- 6.3 Any oral presentations raising new matters and updates by the officers to the Committee will be fully minuted.
- 6.4 In accordance with County Council policy all reports will refer to the financial implications arising from the report, although this will not be a material planning consideration in determining the application.
- 6.5 Where an application is refused in accordance with the officer recommendations, then the reasons for refusal will be as set out in the officer report.
- 6.6 Where the Committee is minded to refuse an application contrary to the officer recommendations, a final decision on the application will usually be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that clear and convincing reasons for refusal of the application can be made, based on material planning considerations.

6.7 Applications which are refused contrary to officer recommendations shall be supported by clear and convincing reasons for refusal, taking into account material planning considerations.

6.8 All reasons for refusal of applications determined contrary to officer recommendations will be minuted in full.

7. Presentations by interested parties to the Committee

7.1 Applicants, objectors and other interested parties (including a representative of a district council or a district councillor) will have the opportunity to address the Committee in respect of any application before the Committee. Prospective speakers shall give 7 days notice that such a presentation is to be made and shall then submit a supporting paper outlining the main points of the presentation at least 2 full working days prior to the meeting, to enable the points they wish to raise to be fully considered. Presentations will be limited to 3 minutes each with a maximum of three presentations. If more than three interested parties wish to make presentations to the Committee, preference will be given to the local parish council, the district council or a district councillor, any local action group or residents association and the developer. There shall be at least one presentation supporting the application and one presentation opposing the application, unless no such persons wish to attend.

7.2 In addition to the above material there is a right for any member of the public being resident in, or a registered local government elector of Hertfordshire to present a petition relating to a matter with which the Committee are concerned, containing 100 or more signatures of residents or Hertfordshire business rate payers. A maximum of 2 petitions shall be presented unless otherwise allowed by the Chairman of the Committee.

8. Conduct at the Committee

Members of the Committee must be free to vote as they consider appropriate on planning matters. Whilst members are free to discuss their opinions on planning applications at political group meetings, decisions must not be made on how to vote on issues prior to the Committee meeting.

9. The Local Code of Conduct for Councillors and Declarations of Interest.

9.1 The local Code of Conduct for Councillors adopted by the County Council requires that members shall conduct themselves at all times in accordance with the general obligations and standards set out in Part 1 of the Code and avoid any conduct which might bring the County Council into disrepute.

9.2 Part 2 of the local Code sets out the legal requirements and guidance for members on declaring personal or prejudicial interests and the consequences of having such interests. These must be followed scrupulously and members

should review their situation regularly. When doing so it must be borne in mind that the local Code advises that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each member.

- 9.3 Personal Interests: The local Code defines "personal interests". Essentially, a member will have a personal interest in a matter if a decision on it could reasonably be regarded as affecting the member to a greater extent than others. If members are present at a meeting when an item in which they have a personal interest is being considered, they must declare their interest but shall be entitled to take part in any discussion and the decision taking process.
- 9.4 Prejudicial Interests: The local Code says that a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest. If members are present at a meeting when an item in which they have a prejudicial interest is being considered, they must declare their interest and withdraw from the meeting for the duration of that item unless one of the exceptions in the local Code applies. (Note paragraph 5.6 in relation to those exceptions)
- 9.5 Part 3 of the local Code sets out and gives guidance upon the requirement for members to register financial and other interests in the register maintained for that purpose by the County Secretary.
- 9.6 Other interests: As indicated in Section 5, any members of the Committee who wishes to express publicly a final view on a planning application prior to the Committee meeting at which a decision is to be taken will declare a prejudicial interest and withdraw.
- 9.7 Members are reminded to seek early advice where they are concerned that there may be a conflict of interests.

10. Delegations

- 10.1 Any planning applications submitted by a member or officer of the County Council in a personal capacity will be considered by the Committee, irrespective of whether it conforms to policy or is uncontentious, and the member or officer will take no part in the processing of the application.
- 10.2 Any such applications will be recorded by the County Secretary as the County Council's Monitoring Officer, who will confirm within the report to the Committee that the application has been processed normally.
- 10.3 Other planning applications will be considered by the Committee where they fall within the categories set out in the County Council's guidance for determining planning applications under delegated authority. A copy of the guidance is appended to this Code of Practice.

11. Availability of information relating to planning applications

- 11.1 Neighbourhood notification of planning applications will be carried out in accordance with the County Council's code of practice relating to consultations on planning applications.
- 11.2 All letters notifying local residents of planning applications will be accompanied by information on how to make their views known to the County Council, including information about making presentations to the Committee.
- 11.3 The local member will be informed of all planning applications that fall to the County Council to be determined as soon as practicable following receipt of the application.
- 11.4 Letters of objection and support will be made available for public inspection during office hours, subject to 24 hours notice.
- 11.5 Copies of planning applications, subsequent amendments, relevant correspondence from consultees, planning decisions, conditions or reasons for refusal and Section 106 Agreements will be made available for public inspection at County Hall during office hours, subject to 24 hours notice.
- 11.6 Copies of planning applications will also be available for inspection at the relevant district or borough council, and where practicable at the local parish or town council. Details of these locations will be given in the neighbour notification letter.

12. Monitoring Development

- 12.1 Periodic site visits will be conducted to enable members of the Committee to monitor the quality of planning permissions granted (a minimum of 3 visits per annum), to include a range of waste management facilities, a working quarry and the County Council's own development.
- 12.2 For each site visited for monitoring purposes a briefing note will be prepared.
- 12.3 Attendance at review visits will be restricted to members of the Committee and the local member(s).

13. Planning Gain

- 13.1 Officers will negotiate with developers with regard to Legal Agreements, in consultation with the local member.
- 13.2 Reports to Committee will include the Heads of Terms for the Agreements.
- 13.3 Copies of any concluded Legal Agreements will be available for public inspection both at County Hall, and in conjunction with the statutory register unless there is a need to respect confidential or commercial information.
- 13.4 Copies of Legal Agreements will also be forwarded to the local parish council together with the decision notice for the application.

END

APPENDIX

Guidance for Determining Planning Applications under Delegated Authority

The Director of Environment will determine all planning applications for county matter and County Council development, and approve matters reserved for the subsequent approval of the County Council except in the following instances.

- ◆ where the application is recommended for approval but the proposed development would be a major departure from the provisions of the development plan;
- ◆ where the local member requests in writing within 21 days of circulation of the details of the application or within 7 days of being notified that it is intended that the decision will be determined under delegated powers that the application be considered by the Development Control Committee, and two of the three Committee Spokespersons give their agreement;
- ◆ where the application is the subject of a material planning objection from the relevant district/borough council(s);
- ◆ where the application is the subject of a material planning objection from the relevant parish council(s);
- ◆ where the application is of significant public interest, or is controversial in the opinion of the Director of Environment;
- ◆ where the application is accompanied by an Environmental Statement in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Provisions 1999 or is otherwise considered by the Director of Environment to have a significant impact on the environment;
- ◆ where the application is submitted on a personal basis by or on behalf of a Councillor of the authority (or their spouse/partner) or by any member of the Council's staff (or their spouse/partner);
- ◆ those applications which for any reason the Director of Environment considers should be presented to the Development Control Committee for decision. In such cases, the reasons for bringing the application before the Committee will be set out in the report.

Note: Whenever the Scheme of Delegations to Officers is amended, any revisions affecting the determination of planning applications will apply to this Code of Practice.

