

PLANNING CODE OF CONDUCT FOR COUNCILLORS

ADOPTED BY COUNCIL, 20 OCTOBER 2015 (updated 22 May 2019)

1. Introduction

- 1.1 This guidance note is purely advisory. However, its recommendations are based upon the best practice promoted by the Local Government Association, the Planning Advisory Service and the Royal Town Planning Institute's Code of Professional Conduct. It also takes into account advice issued by the Local Government Ombudsmen and the Council's Code of Conduct for Councillors. Failure to follow the recommendations without good reason could be taken into account in investigations into possible maladministration or have implications for the standing of Councillors and professional officers.
- 1.2 This Code once adopted is intended to guide Councillors who deal with planning matters at Reading Borough Council. Though devised primarily to address the processing of planning applications, it applies equally to all planning matters including planning policy, enforcement of planning control, listed buildings, conservation areas and trees.

2. Outline of Planning

- 2.1 Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is also highly contentious because its decisions affect the daily lives of the public and the private interests of individuals and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions) and the legal nature of development plans and decision notices.
- 2.2 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore, that the Council should make planning decisions affecting these interests openly, impartially, with sound judgement, and for justifiable reasons. The process should leave no grounds for suggesting, with any justification, that a decision has been the subject of bias or predetermination or was otherwise not well founded.
- 2.3 Thus the successful operation of the planning system in Reading depends upon the Council always acting in a way which is clearly seen to be fair and impartial. This requires a shared understanding of the respective roles of Councillors and officers and trust between these parties. The following quotation from the Local Government Association serves to illustrate the point:-

“The role of an elected member on a planning committee involves a balance between representing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals. It is this dual role which, as the Nolan Committee in its recent report acknowledges, can give rise to great tensions”.

(Source: Probity in Planning 1997)

3. The General Role and Conduct of Councillors and Officers

- 3.1 Councillors and officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise Councillors and the Council, and carry out the Council’s work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to officers through a formal Council decision including delegated powers. Any other system which develops is open to question. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other’s positions. This relationship, and the trust which underpins it, must never be abused or compromised.
- 3.2 Both Councillors and officers are guided by Codes of Conduct. The Local Code of Conduct provides general guidance and standards for Councillors. Breaches of that Code may be regarded as maladministration by the Local Government Ombudsman, and failure to declare a pecuniary interest may be a criminal offence. Officers are also bound by the Council’s Code of Conduct for Officers and those who are Chartered Town Planners are guided by the Royal Town Planning Institute’s (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. In addition to these Codes the Council’s standing orders set down rules which govern the conduct of Council business.
- 3.3 Officers must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 Act places restrictions on their outside activities, such as membership of political parties and serving on another Council. During the course of carrying out their duties, officers may be offered hospitality from people with an interest in a planning proposal. If possible, such offers should be declined politely. If receipt of hospitality is unavoidable, officers should ensure it is of the minimum level and declare its receipt as soon as possible. Officers will be guided in such matters by the Council’s Code of Conduct for Officers.
- 3.4 In respect of planning, Councillors set policies and must determine applications, enforcement issues and other planning matters within the context of those policies. When the Planning Applications Committee considers any report and recommendation within that report Councillors must:-

- Act fairly and openly.
- Approach each application with an open mind.
- Carefully weigh up all relevant issues.
- Determine each application on its own merits.
- Avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another.
- Ensure that there are clear and substantial reasons for their decisions and that those reasons are clearly stated.

3.5 The officers' function is to advise and assist Committee Members in policy matters and in their determination of planning applications, enforcement issues and any other planning related matters by:-

- Providing impartial and professional advice.
- Making sure that all the information necessary for the decision to be made is given.
- Providing a clear and accurate analysis of the issues.
- Setting planning applications, enforcement issues and other planning matters against the broader Development Plan policies and all other material considerations.
- Giving a clear recommendation.
- Carrying out the decisions of the Committee.

4. **Declaration and Registration of Interests**

4.1 The Localism Act 2011 places requirements on Councillors regarding the registration and disclosure of pecuniary (financial) interests and the consequences for a Councillor taking part in consideration of an issue in the light of those interests. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out the definition of such interests. The Local Code set out requirements and guidance for Councillors, respectively, on declaring pecuniary interests and non-pecuniary interests and the consequences of having such interests. These must be followed scrupulously and Councillors 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 Councillor. The Commission for Local Administration in England's publication 'Guidance for Good Practice on Members' interests' also provides helpful advice.

4.2 A Register of Members' Interests is maintained by Councillor Services. Councillors who have substantial property interests or other interests which would or are likely to prevent them from voting on a regular basis, should avoid taking up a position on the Planning Applications Committee and/or avoid other Council positions where regular decisions on planning matters are required.

- 4.3 Whilst advice on what constitutes a pecuniary interest is reasonably clear, that regarding non-pecuniary interests or personal interests is less so. Advice is given in the Local Code for Councillors. It is for Councillors to interpret this using the guiding rule that one should not use one's position to further a private or personal interest, rather than the general public interest, or give grounds for such suspicion. Such non-pecuniary interests include those of a spouse or civil partner and being a member of an outside body. There is no statutory duty to register or declare such interests but Councillors are encouraged to do so.
- 4.4 Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process and the acceptance of gifts or hospitality by Councillors can be a very serious criminal offence. Committee Members should have particular regard to the provisions of the Local Code of Conduct. Also, they should avoid any behaviour which might be taken as indicating that they are open to such offers.

5. **Bias and Predetermination**

- 5.1 The common law principles of bias and predetermination may apply even if no pecuniary or other interest exists. Bias is *“an attitude of mind which prevents the decision maker from making an objective determination of the issue he has to resolve.”* It could include membership of a body that has lobbied for or against the issue being determined.
- 5.2 Predetermination is having a closed mind ie where a person has *“nailed their colours to the mast”* in advance of considering all material planning considerations including the debate at the Planning Applications Committee.
- 5.3 Councillors cannot take part in decisions on individual applications if they are biased or have already made up their mind. If they do the decision of the Committee is susceptible to judicial review proceedings.
- 5.4 However, where a Councillor has expressed a preliminary view (predisposition), no matter how strong that may be but s/he is willing to listen to all the considerations presented at the Committee then they are at liberty to fully participate in the decision making process.
- 5.5 Section 25 of the Localism Act 2011 makes it clear that a Councillor should not be taken to have had a closed mind just because s/he had previously done anything to indicate the view s/he might take.
- 5.6 All these matters are best judged by applying the objective by-stander test namely whether in all the relevant circumstances the reasonable onlooker would conclude that there was a real possibility, or a real danger of bias. If the answer to that question is yes the Councillor should declare and leave the room.

6. Lobbying of and by Councillors

- 6.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who are making proposals may wish to explain them to Elected Members or those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward Councillor or to a member of the relevant committee. 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 via the local elected representatives, the Councillors themselves.
- 6.2 However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called into question (See Paragraph 5 on Bias and Predetermination above). When being lobbied, Councillors should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the relevant officer's report. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at the Committee.
- 6.3 In reality, of course, Councillors will often form a preliminary view about an application early on in its passage through the system, whether or not they have been lobbied. Members of the Committee must accept that they will only make a final decision about how to vote on a particular application when they have heard the evidence and arguments on both sides.
- 6.4 A Committee Member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a Councillor represents either their own or constituents opposition to a planning application on planning or other relevant grounds that Member should not be constrained from speaking at the Committee meeting or voting on the application. However if the Member responds to lobbying by applicants by deciding to go public in support of a particular outcome, or by campaigning actively for it before the matter is formally considered by the Council and before all the facts and information are known, the proper course of action for such a Member would be to make an open declaration that they have already formed a judgement and in those circumstances it would be inappropriate for them to vote.

7. **Political Discussions and the Party Whip**

- 7.1 There are occasions when planning matters will be discussed prior to being determined at Committee by political groups and/or by the Chair and Vice Chairs of Committee either with or without officer attendance. These meetings are informal opportunities for Councillors to consider various aspects of planning matters before taking a decision at Committee. For more complex planning proposals these informal meetings may be essential to the understanding of proposals and could lead to the request for more information or consultation on a proposal.
- 7.2 Notwithstanding Paragraph 7.1 Members of the Committee cannot accept an instruction from anyone to determine an application in a particular manner, but must determine the issue on its merits. Accordingly, whilst they may accord appropriate weight to the relevant views of other Committee Members, whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. Therefore, it is inappropriate for any Party Group to instruct its Committee Members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any Member who votes contrary to the Group's collective views.
- 7.3 Where such a "Whip" has been applied, Committee Members should declare it in exactly the same manner as they would declare any other attempt at lobbying.
- 7.4 A Councillor must not put pressure on officers for a particular recommendation.
- 7.5 Call-in procedures, whereby Councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern.

8. **Pre-Application and other discussions held before a decision is made.**

- 8.1 Discussions between a potential applicant and officers/Members prior to the submission of an application can be of considerable benefit to both parties and is to be encouraged. However, it would be easy for such discussions to become, or be seen (especially by objectors) to become, part of a lobbying process. The Localism Act, particularly S25, 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.
- 8.2 In order to avoid such problems, pre-application discussions should take place within the clear guidelines below. Although the term

'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice should be given by officers based upon the development plan and material planning considerations.
- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.
- Confirmation that a written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non - confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines would apply. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Authorities should think about when, however, discussions should be registered and notes written.

8.3 The council has other mechanisms to involve councillors in pre-application discussions including:

- Committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information;

- Developer presentations to committees which have the advantage of transparency.
- Ward Councillor briefing by officers on pre-application discussions.

8.4 Similar arrangements can also be used when the Council is looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

8.5 The Statement of Community Involvement will set out the Council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

9. Officer Reports

9.1 It is particularly important to write full and consistent reports to Committee on planning applications with clear officer recommendations, not only as a matter of good practice, but because failure may constitute maladministration, and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the Council's statutory duties under the Town and Country Planning Act 1990 and other town planning legislation/delegated legislation.

- Relevant points will include a clear explanation of the development plan, site or related history, and any other material considerations.
- Reports should be accurate and cover, among other things, the substance of objections and the views of people who have been consulted.
- Reports should have written recommendations of action; oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.
- Reports should include a balanced assessment of the planning issues and contain a technical appraisal which clearly justifies the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

10. **Site Visits**

- 10.1 Where possible site visits should take place in advance of the planning application report being considered by Committee and should only be used where the expected benefit is substantial.
- 10.2 The purpose, format and conduct of site visits should be clearly established by officers. They consist simply of an inspection by a Viewing Sub-Committee, with officer assistance either in person or through a briefing note, as the most fair and equitable process between applicant and objectors. Applicants and objectors will have no right to speak but can merely observe the process and answer questions when asked. Applicants will be informed of such visits as a matter of practice.
- 10.3 A site visit may be requested by Councillors if the impact of the proposed development is difficult to visualise from the plans and any supporting material including photographs taken by officers (although, if this is the case, additional illustrative material should have been requested); or, there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing; or, the proposal is particularly contentious.

11. **The Decision Making Process**

- 11.1 In determining applications submitted pursuant to the Town and Country Planning Act 1990 and other planning or planning related legislation the Council will follow the Guidelines adopted as part of this Code. These adopted Guidelines will be subject to changes from time to time to reflect the latest government guidance and case law (Appendix A).
- 11.2 Committee Members should not take part or vote on any application or matter if they have not read the Committee report and have not been present throughout the consideration of such application or matter unless the item has been deferred from a previous meeting after being partially considered.
- 11.3 In discussing and determining a planning application, enforcement issue or other planning matter, Committee Members should confine themselves to the planning merits of the case. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits. The Planning Committee's decisions should be properly minuted.
- 11.4 From time to time Members of the Planning Applications Committee will disagree with the professional advice given by the Assistant Director of Planning Transport and Regulatory Services, the Head of Planning or his representative. As indicated above planning is not an exact science and there can be genuine disagreement about the implications of a particular proposal. A legal officer will be present at Committee and will be able to

advise if the facts simply cannot support the conclusion which the Committee Members have drawn and the Committee is in danger of acting unreasonably and exposing the Council to a claim for costs.

- 11.5 Where an appeal arises against such a decision, officers will give support to the relevant Committee Members in preparing evidence for the appeal, but it will be for Members of the Planning Committee to appear at any appeal inquiry/hearing and give evidence to justify the reasons for the Committee's decision. On occasion the Assistant Director of Planning, Transport and Regulatory Services or Head of Planning may consider it appropriate to appoint external Planning Consultants to defend the decision.
- 11.6 Where Committee Members wish to add or amend conditions or reasons for refusal, the general content will be agreed at the meeting before the vote is taken and the final wording will generally be delegated to the Assistant Director of Planning Transport and Regulatory Services / Head of Planning.
- 11.7 If the officer report recommends approval of a departure from the Development Plan, the justification for this recommended departure should be included in the report.

12. **Section 106 Planning Agreements/Unilateral Undertakings**

- 12.1 When applications which propose or require planning obligations by agreement or Unilateral Undertaking are referred to the Planning Applications Committee the heads of agreement will be included in the officers' written report, and a copy of the agreement, when made, will be publicly available, provided (following the advice of a Council Solicitor) it is not considered to prejudice clearly established interests of commercial confidentiality.

13. **Development proposals submitted by Councillors and Officers, and Council development**

- 13.1 Proposals to their own authority by serving Councillors and officers can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications, development plan proposals or relate to other planning matters including enforcement.
- 13.2 It is perfectly legitimate for such planning applications and development plan proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism.
 - Serving Councillors who act as agents for people pursuing a planning matter within their authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the authority they serve, they should take no part in its

processing, nor should they seek to influence the case officer's assessment or recommendation on the proposal.

- All planning matters that relate to serving Councillors should be reported to the relevant Council body as main items and not dealt with by officers under delegated powers. In addition planning matters that relate to any member of the Corporate Management Team and any person employed or engaged by the Planning and Legal Services must be dealt with in the same way and be determined by the Committee. The Committee report should make it clear that the applicant is a member or a relevant officer of the Council.
- Proposals for a Council's own development should be treated in the same way as those by private developers.

13.3 Enforcement matters relating to serving Councillors and officers will also be dealt with in the same way as any other enforcement case.

13.4 The Council's Monitoring Officer should be informed of such proposals or other planning matters relating to serving Councillors and officers.

14. **Training**

14.1 Planning regulations can sometimes be complex and it is appropriate that councillors should receive basic training on planning when first appointed to the planning applications committee or local plan steering group, and regularly thereafter. Officers will also provide guidance to individual councillors on planning related matters as necessary.

15. **Complaints and Record Keeping**

15.1 Every planning file will contain an accurate account of events throughout its life. It should be possible for someone not involved with the matter to understand what the decision was and how and why it was reached. Planning matters determined under officers' delegated powers, where there is no Committee report, will be as well documented and recorded as those taken by the Committee.

15.2 Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance note should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place. When such complaints came forward, they will be treated as any other made to the Council and considered under the Council's complaints procedures.

COUNCIL GUIDELINES FOR DETERMINING PLANNING APPLICATIONS

1. The emphasis in determining applications is upon a plan led system. Section 54A of the Town and Country Planning Act 1990 requires all planning applications to be determined by reference to the Development Plan if material to the application, and any other material considerations. If the Development Plan is material to the application then the statutory position is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
2. The term “*other material considerations*” has a wide connotation as expressed by the following judicial comment:-

“I find it impossible, however, to accept the view that such considerations are limited to matters relating to amenity.....it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration”.
3. Material considerations include national planning guidance in the form of the NPPF, the NPPG, government Circulars, a Ministerial Statement, Non-Statutory Development Control Guidelines Inspectors Decisions and case law.
4. Examples of material considerations are:-
 - appearance and character of development;
 - traffic generation, highway safety and parking;
 - overshadowing, overlooking and loss of privacy;
 - noise, disturbance or other loss of amenities;
 - layout and density of buildings;
 - relevant planning policies.
5. Matters which are not material considerations include:-
 - boundary disputes, covenants or other property rights;
 - personal remarks (e.g. the applicant’s motives);
 - reduction in property values;
 - loss of private view over the land.
6. The personal circumstances of an applicant for planning permission are not generally a material consideration because they do not relate to the character or use of the land. However, in exceptional circumstances they may outweigh other material planning considerations. Where this is the case, specific and valid reasons must be given to justify the exception.
7. What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision-maker having regard to the planning evidence.

8. It is essential to consider thoroughly any advice given by a statutory consultee or relevant Government Department, including views expressed by Historic England or the Environment Agency.
9. The view of local residents are relevant when determining a planning application, but it must be recognised that such opposition cannot be reason in itself for refusing or granting planning permission unless founded on valid planning reasons, which are supported by substantial evidence.
10. Account should be taken of previous Council decisions, appeal decisions in relation to the site, or other related appeal decisions.
11. It is not permissible to prevent, inhibit or delay development which could reasonably be permitted.
12. Planning Conditions should only be imposed for a planning purpose and not for any ulterior one. They must fairly and reasonably relate to the development. Thus it is essential to avoid conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.