

Appendix A

West Berkshire Code of Conduct for Planning **December 2012**

1. Introduction

- 1.1 This Code of Conduct is intended to guide the procedures by which Councillors and Officers of the Council deal with planning matters and to set standards of probity and conduct which the people of West Berkshire can expect of them.
- 1.2 As Planning affects peoples' lives and private interests, it can be very contentious. It is, therefore, important that members of the public understand the system and have confidence in its integrity and transparency, and that Councillors and Officers, involved in the 'planning' process, avoid impropriety or even the suspicion of impropriety.
- 1.3 The role of Councillors on any planning committee involves balancing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision making and compliance with the planning process and adopted policies. A transparent open process is therefore essential.
- 1.4 The role of Officers within the planning process is also vital and is covered in this protocol.
- 1.5 If Councillors need any guidance on any matter under this Code, they should seek it from the Monitoring Officer but it is the Councillor's responsibility to comply with the Code.

2. Relevant Legislation

- 2.1 The conduct of both Officers and Councillors in Local Government needs to be of the highest standing. The Nolan Committee's Third Report investigated standards in public life, and was followed by the Local Government Act 2000 which introduced a structure by which local authorities were to promote high standards of conduct, through a National Code of Conduct for Councillors. In 2013 the Local Government Association provided updated guidance on "Probity in Planning" and the Localism Act 2011 has created a new Standards regime with a more local focus.
- 2.2 This Code has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act are relevant to this Code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for Councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind.

- 2.3 Secondly, and related to pre-determination, the act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Councillors and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.
- 2.4 This Code of Conduct forms part of the Council's Constitution. This Code is available to the public and is on the Council's website. It will supplement the Councillors adopted Code of Conduct (Appendix H to Part 13 of the Constitution).
- 2.5 The governance structures and rules of procedure for the Area and District Planning Committees are set out in Part 7 (Regulatory and Other Committees Rules of Procedure) of the Constitution.

3. Breaches of the Code

- 3.1 A breach of this Code, while not usually amounting to a breach of criminal law, may adversely affect the reputation of the Council and the reputation of an individual Councillor. It could result in a decision being judicially reviewed or result in a complaint to the Local Government Ombudsman, or an allegation of a breach of the Code of Conduct.
- 3.2 Any alleged breach of this Code of Conduct will be investigated locally in accordance with the procedures associated with the Code of Conduct (see Appendix H to Part 13 of the Council's Constitution). It is the responsibility of the Monitoring Officer to investigate the case and prepare a report for the Standards Committee if a breach of the Code of Conduct is alleged to have occurred.
- 3.3 Where any Officer is concerned, in an alleged breach of this Code, this will be investigated in accordance with the Council's disciplinary procedure.

4. Role and Conduct of Councillors and Officers

- 4.1 Councillors and Officers have different, but complementary, roles in the planning process and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council that they work as an effective team.
- 4.2 Members of the Planning Committee have different roles to those of other Councillors. Councillors who are members of the Planning Committee determine the more significant and contentious planning applications received by the Council. In doing so these Councillors and nominated substitutes perform a quasi-judicial role and are required to consider all planning proposals against the wider public interest.
- 4.3 When considering planning applications Councillors need to ensure that only material planning considerations are taken into account. In reaching a decision Councillors should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where

they may appear to do so. In order to ensure that decisions are taken on planning grounds and are sound it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of the consideration of a development proposal at the Planning Committee itself.

- 4.4 Planning Committee Members must take steps to ensure that in their discharge of their Planning Committee duties the distinction between this role and their role as Ward Members is constantly made clear. If Members wish to act in the latter capacity they must make that clear at the outset.
- 4.5 Officers are employed by the Council. Instructions may only be given to Officers by the Council, its Executive or a Committee or by way of delegated powers. Officers involved in the processing and determination of Planning matters must act in accordance with the Officers Code of Conduct (see Part 13 of the Constitution) and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct and any other applicable guidance. Officers are required to act impartially at all times in determining applications and providing advice at the Planning Committee. Officers will be expected to conduct themselves in all they say and do in a manner which totally preserves this position of impartiality.
- 4.6 It is not appropriate for Councillors to direct Officers to determine an application in a particular way. A Councillor must not use improperly their position as a member to confer on, or secure for himself or any other person, an advantage or disadvantage.
- 4.7 Councillors must not favour, or discriminate against, any person, company, group or locality nor put themselves in a position where they appear to do so.

5. Gifts and Hospitality

- 5.1 Both Officers and Councillors must be cautious about accepting gifts and hospitality.
- 5.2 Any Councillors offered any gift or hospitality, in their capacity as Members must treat the offer in accordance with Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors) to Part 13 (Codes and Protocols) of the Constitution. Officers offered any gift or hospitality must treat the offer in accordance with paragraphs 13.5.2 (Gifts & Hospitality – General), 13.5.3 (Rules and Procedure for Gifts and Hospitality) and 13.5.4 (Hospitality) of the Council's Constitution.

6. Interests

- 6.1 A Register of Councillors' interests is maintained by the Council's Monitoring Officer and is available for public inspection and is published on the Council's website.
- 6.2 Written details of Disclosable Pecuniary Interests must be provided to the Monitoring Officer within 28 days of election or appointment to office and any

changes to those interests must also be provided to the Monitoring Officer in writing within 28 days of the member becoming aware of such changes.

- 6.3 Where Councillors have a personal interest they must disclose to that meeting the existence and nature of that interest at the start of the meeting or when the interest becomes apparent. Councillors who have a personal interest in an item are permitted to take part in the discussion and vote on the item.
- 6.4 Where Councillors have a Disclosable Pecuniary Interest (DPI) they may attend a meeting either as a member of the committee and/or as a Ward Member but only for the purposes of making representations, answering questions or giving evidence relating to the business (provided the meeting is one where members of the public are allowed to make representations). They may not propose a motion, vote or take part in the decisions making process of the Committee. They must withdraw from the meeting before the vote is taken and their vacating the room will be noted in the Minutes of the meeting. It is for the individual Councillor to decide what the interest is. They may seek advice from the Monitoring Officer or from Legal Services but it is their decision. If advice is sought it should be sought as early as possible. It is therefore important that agenda are read in good time and that, if possible, advice is sought no later than the day before the meeting. It is better not to raise a query on interests in a public forum. By doing so, public perception may well lead to the conclusion that the interest is a DPI.
- 6.5 Members who have a DPI may, in certain circumstances, apply for a dispensation which would allow them to take part in discussions and vote on an item, The procedure for applying for and the granting of dispensations is set out in Appendix 2 to Appendix H (the Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.
- 6.6 Ward Members who have an interest (personal or DPI) in an item should ask for that interest to be recorded on the planning file. This is especially important where Ward Members seek permission to call the item to Committee.

7. Pre-Disposition or Pre-Determination

- 7.1 Members of the Planning Committee need to ensure that they do not fetter their ability to participate in the decision making process on an application by making up their mind or clearly indicating that they have made up their mind on how they will vote prior to the consideration of the application by the Committee.
- 7.2 The Planning Committee should, when considering an application, take into account all views that are expressed in such a way that they are openly heard and fairly considered in a balanced way before the Committee reach a decision.
- 7.3 Members of the Planning Committee can have a predisposition to an initial view, where the Councillor is clear they are still willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.

- 7.4 A Councillor that has fettered their discretion and then takes part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 7.5 The Localism Act 2011 (Section 25) provides that a Councillor who has expressed a preference for a particular outcome of an application as it proceeds to determination, will **not** be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. However, in order to use this provision, it is important that a fair minded observer would consider that the Councillor was open to changing their mind in the light of different or additional information, advice or evidence presented.
- 7.6 It will be evident that the appropriate action is not clear cut and will depend on the circumstances of a particular case and application. Planning Committee members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Councillors taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should avoid committing themselves one way or another before hearing all the arguments.
- 7.7 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Councillor decides to make a public statement, and either supports or opposes the application, it will be difficult for that Councillor to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Councillor should make an open declaration, in relation to their position and not vote on the determination of the application at Planning Committee.
- 7.8 The open declaration should be noted in the Planning Committee minutes. The Councillor will also be required to vacate their seat within the Planning Committee and to sit within the public gallery for the duration of the consideration of the item, and where they have exercised their right to speak as a Ward member, they can address the Planning Committee at the appropriate time in accordance with the Ward Member speaking arrangements (see paragraph 7.13 (Planning Applications)).
- 7.9 Ultimately it is the responsibility of the individual Councillor to ensure that, as a result of their stance in regard to a particular matter the Planning Committee is not compromised and it is also for them to strike the balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

8. The Role of the Executive Member

- 8.1 Members of the Executive (also known as Portfolio Holders) may be on Planning Committees and may have an interest in an application because of their role on the Executive.
- 8.2 There may be occasions where the Council is sponsoring a development and an Executive Member may be seen as the chief advocate on the Executive.
- 8.3 In such circumstances the appropriate approach is that the Executive Member may argue for (or against) the development in the planning meeting during the debate but may not vote on the relevant application. It is recommended that the Executive Member advise the committee at the outset of the meeting of their position in respect of voting on the particular item.

9. Lobbying

- 9.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications. If a Councillor, who is not on the Planning Committee to determine an application, wishes to support a particular viewpoint then that Councillor has a right to appear at the relevant Planning Committee and seek permission to address the meeting provided that they have registered to speak in accordance with paragraph 7.13.2 (Notifying Head of Service).
- 9.2 It is, however, important that Councillors protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality and potentially open the Council to challenge.

10. Ward Members

- 10.1 Ward Members have a central role in helping to represent the views of local people and other stakeholders at both pre-application and planning application stage. Ward Members bring strong community leadership, extensive local knowledge and an up to date understanding of current issues.
- 10.2 Planning Officers have to act impartially at all times, but will provide support and advice to Ward Members on planning matters in order for them to play this community leadership role. This will include the involvement of Ward Members in negotiations on planning obligations in appropriate circumstances.
- 10.3 Planning obligations negotiated under Section 106 of the Town and Country Planning Act, 1990 must be seen to mitigate the effects of development whilst recognising that each must comply with council planning documents, policies and guidance and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

- 10.4 To be lawful, a planning obligation must meet all of the following statutory tests. It must be:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.

(These apply to both future and existing Section 106 obligations and to CIL payments).

- 10.5 To this end, where the need for a planning obligation is anticipated by a Planning Officer, Ward Members will be consulted at an early stage of the pre-application and planning application process. The views of Ward Members on planning obligations will be sought electronically through weekly lists and shall be considered in any decision taken by the Planning Committee or by an Officer acting under delegated authority.

11. Only One Forum

- 11.1 Members of the District Council may consider applications at Parish level and they form a view **on the basis of evidence available at that time**. At District level they may consider the same application but with additional information and advice from Officers, may well change their mind which indicates they come to that meeting with an 'open mind'.
- 11.2 It is suggested that Councillors who sit at parish or town level indicate to the meeting that while they have a personal interest by way of their membership of the Parish/Town Council as a Councillor, any comments made at the Parish/Town Council Meeting are made in relation to the information before them at that meeting. Councillors are not pre-judging the matter and will want to consider carefully all material likely to be available at district level. When the matter is considered by the District Planning Committee the Councillor will weigh up all the information at that time and consider the matter afresh.

12. Planning Applications by Councillors, Officers or the Council

- 12.1 These can, by their very nature, arouse suspicions of impropriety. It is vital they are handled in a way that ensures there are no grounds for accusations of favouritism.
- 12.2 If it is a Council application it will be treated in the same way as a private developer in accordance with DoE Circular 19/92. This Circular outlines that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the same policy background. Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.
- 12.3 If it is a Development Control Officer application another planning team will deal with it. If the application falls within delegated powers and is made by any Officer of the Council, the Corporate Director, not the Head of Service, will exercise the delegated power (in consultation with the Monitoring Officer).

If it is a Councillor application they are entitled to speak to Officers both prior to and at Committee in the same way as any member of the public. They will have a Disclosable Pecuniary Interest and should refer to paragraph 5 above as to the process. However, they shall not seek improperly to influence the decision and shall play no part in the debate itself as a Councillor nor be able to vote. The Council's Monitoring Officer shall be informed of all applications by Councillors and Officers and will register such applications.

- 12.4 All Planning Officer and Councillor applications must go to Committee by virtue of paragraph 3.14.6 (Planning) of the Council's Constitution.

13. Planning Committee Briefings

- 13.1 When considering a request for a briefing, the complexity of the proposal should be considered. Planning Committee briefings should be restricted to more complex proposals.
- 13.2 The Chairman of the Planning Committee must approve any request for a briefing in consultation with the Development Control Manager and the Monitoring Officer, or their representatives.
- 13.3 To avoid any perception of influence it is advisable that any briefing must take place at least three weeks before the meeting of the Planning Committee that will hear the application. Briefings should avoid discussion. The Chairman of the Committee will manage the briefing. Officers will be present to record proceedings.
- 13.4 Consideration should be given to inviting Ward Members, Parish Council representatives and other interested parties.

14. Discussions before Decision is made

- 14.1 Councillors have a role to play in helping consultation between their constituents and developers. Such consultation can be a huge benefit to all parties but can easily be seen as part of a lobbying process by the applicant if care is not taken.
- 14.2 This section covers any discussions taking place before a decision is made not simply prior to the application being submitted. It does not affect discussions between Councillors and Officers nor does it impact on any pre-application planning advice provided by Officers under the adopted policy .
- 14.3 Any discussions should be on the basis that the Council will not be bound and that Councillor's views are personal and provisional.
- 14.4 Planning advice given by Officers should be consistent, based on the Development Plan and material considerations.
- 14.5 The Councillor's role is to feedback responses from the community. If invited to attend pre-committee discussions Councillors should speak first to the Planning Officer handling the application.
- 14.6 If such a meeting is held, a written note should be made of the meeting, particularly if contentious. At least one Officer should attend any such meetings and a follow up letter from the Councillor is advisable summarising the discussion.

- 14.7 If an Officer is unable to attend and the meeting has to go ahead the Councillor should make written notes and forward a copy of these to the Development Control Manager as soon as possible.
- 14.8 Councillors should also note that potentially contentious telephone discussions should also be recorded in writing, preferably immediately after the conversation so recollection is fresh and should be reported to the Monitoring Officer.
- 14.9 Where a meeting concerns a major development, it is preferable that the meeting takes place on Council premises and notes of discussions are made.

15. Site Visits

- 15.1 Consistency on why they are held and how they are held is essential. To ensure site visits are seen as constructive and not as a lobbying device they should be well managed. The Chairman is responsible for ensuring everyone is clear as to the purpose of the visit and their respective roles.
- 15.2 The reasons for a site visit being necessary should be recorded in writing.
- 15.3 A site visit is usually only necessary where the impact of the proposed development is difficult to visualise from the plans and photographs
- 15.4 Site visits should be by the viewing committee with Officer assistance. If applicants, supporters or objectors are there, the applicants, supporters or objectors are free to make their points but the Chairman must not permit debate (which should take place at Committee) to take place at the site visit. Site visits are to look at the site not to discuss the merits of the application. They are designed to ensure Councillors can make a more informed decision at the Committee meeting.

16. The Committee Meeting Itself

- 16.1 Five-minute slots within each application are allocated as a total for all parties wishing to address committee. This means all applicants, objectors, parish councils and supporters have a total of five minutes, which they may share as they wish. Adjoining parish councils also have an opportunity to speak. Where there is more than one adjoining Parish/Town Council speaking but requiring a fundamentally different outcome of either refusal or approval, the speakers will be allowed five minutes each; where the outcome required is fundamentally the same, the five Minutes will be shared by the speakers.
- 16.2 The Chairman of the meeting may extend the time slot if it is considered appropriate by the Committee in view of the large public interest in the matter but this must be by a vote of the Committee agreeing to suspend this provision of the constitution. All groups of speakers will then be permitted equal amounts of time to address the Committee.
- 16.3 The Committee may only ask those speaking for clarification of points raised. They may not ask any other questions nor may they effectively increase the time allowed by asking what would have been said if they had time.
- 16.4 No new information may be produced to Committee on the night (this does not prevent applicants or objectors raising new points verbally). If objectors or applicants wish to introduce new additional material they must provide such material to Planning Officers at least 5 clear working days before the meeting

(in line with the Local Authorities (Access to Meetings and Documents) (Period of Notice) (England) Order 2002).

17. Decisions Contrary to Officer Recommendations and/or the Development Plan

- 17.1 The general principle in planning is that where the Development Plan is up to date and relevant, planning applications should be determined in accordance with it unless material considerations indicate otherwise.
- 17.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990 as amended by Section 143 of the Localism Act 2011.
- 17.3 Any application contrary to the Development Plan must be advertised as such. If such an application is to be approved the material considerations leading to this conclusion must be clearly identified.
- 17.4 If the committee decides to approve an application which is contrary to Officer advice Councillors must provide the reasons for the decision and a detailed minute of the reasons must be made. Copies of these minutes will be publicly available. Officers should be able to address committee and explain clearly the implications of the decision. Any decision contrary to the Development Plan in the opinion of the Development Control Manager or his designated nominee may be referred up to the District Planning Committee.

18. The Role of the Chairman

- 18.1 Agenda management is vital to the smooth running of the meetings. The Chairman is key to this. Each Chairman will discuss with the appropriate Strategic Support, Legal and Planning Officer before the committee the items on the agenda and will query, where necessary, matters referred up and site visits called.

19. APPEALS AND INQUIRIES

- 19.1 In the event that planning permission is refused either under delegated powers conferred on the Head of Planning and Countryside or by the Planning Committee, an applicant may exercise their right of appeal. Officers are responsible for preparing the Council's evidence for these appeals, and the vast majority of these are dealt with by written representations involving an exchange of statements. On occasions, specialist Counsel and consultant support is needed to supplement the evidence of Officers.
- 19.2 In the case of an applicant exercising their right to an informal hearing or a Public Inquiry Officers will be responsible for presenting the Council's evidence and attending to present that evidence. Councillors are at liberty to attend in their capacity as Ward Members and may be called to give evidence as a Ward Member. Members of the Planning Committee will not normally be required to attend to present the Council's case.

- 19.3 In the case where the Planning Committee has refused planning permission contrary to Officer's recommendations, Officers will normally prepare and present the evidence in their role as employee of the Local Planning Authority. It will be for the Head of Planning and Countryside to identify the Officers to prepare and present the evidence.
- 19.4 It should not be necessary for Members of the Planning Committee to become involved in preparing and presenting the case at appeal on an overturned decision, because the reasons for refusal and statements on relevant policies put forward by the Councillors in reaching their decision should be sufficient to defend the case. However, there may be some situations where in an inquiry a Councillor involvement as a relevant witness is necessary in order to provide a full and accurate case. In circumstances where the Head of Planning and Countryside considers this to be the case the Member will be expected to attend any Informal Hearing or Public Inquiry in support of the Council's case.
- 19.5 In exceptional circumstances the Head of Planning and Countryside may not be able to prepare the Council's evidence to the hearing or inquiry because the Officer's earlier recommendation on the grounds of refusal is so prejudiced by the earlier advice given. In these circumstances a nominated Member of the Planning Committee together with an externally appointed consultant will need to present the Council's evidence.

20. Complaints

- 20.1 Complainants alleging a breach of this protocol may direct their allegations to the Monitoring Officer.
- 20.2 To investigate complaints fully, record keeping should be complete and accurate.
- 20.3 Decisions taken under delegated powers should be as well documented and recorded as those taken by Councillors at a Planning Committee. Complaints pertaining to delegated decisions will be dealt with under the Council's Corporate Complaints Procedure.
- 20.4 A complaint may be made to the Local Government Ombudsman in the event that a complainant was not satisfied with the result of an investigation under the Council's complaints procedure. This must be made on the appropriate prescribed form and submitted direct to the Local Government Ombudsman.

21. Training

- 21.1 All Members of the Planning Committee (including Substitutes) to receive appropriate training before being able to make formal decisions of the Committee and then to attend subsequent refresher training to remain on the Committee.