

Warwick District Council Probity in Planning

Foreword

This is based on the Local Government Association and Planning Advisory Service Probity in Planning guide. It clarifies how Councillors can get involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

This guide has been written for Councillors and officers involved in planning, who both should be familiar with their respective codes of conduct and appropriate guidance.

This guide is not intended to, nor does it constitute, legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity.

Introduction

Planning has a positive and proactive role to play at the heart of local government. It helps to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic, and environmental needs to achieve sustainable development.

The planning system works best when Councillors and officers involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.

Planning decisions involve balancing many competing interests. In doing this, decision makers need an ethos of decision-making in the wider public interest on what can be controversial proposals.

It is recommended that Councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

The general role and conduct of Councillors and officers

Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. At Planning Committee officers advise based on their professional training and experience, Councillors and the Council decisions. Officers are employed by the Council, not by individual Councillors. A successful relationship between Councillors and officers is based upon mutual trust, understanding and respect for each other's positions.

Both Councillors and officers are guided by their respective codes of conduct. The 2011 Localism Act sets out a duty for each local authority to promote and maintain high standards of conduct by Councillors and to adopt a local code of conduct. In line with this, Warwick District Council, along with all Parish & Town Councils in Warwick District, has adopted the Local Government Association Model Code of Conduct.

The adopted codes of conduct for both Councillors and officers are consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

All Councillors and Officers should embrace the standards within the Code of Conduct central to the preservation of an ethical approach to Council business, including the need to register and disclose interests, as well as appropriate relationships with other Councillors, staff, and the public.

Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute.

In addition to these codes, the Council Procedure Rules set down the rules which govern the conduct of Council business.

Within their adopted Codes of Conduct, Councillors and officers are advised not to accept gifts and hospitality. Any Councillor or officer receiving any such offers over and above an agreed value must let the Council's Monitoring Officer know, in writing. Guidance on these issues for both Councillors and officers are set out in the Council's adopted code of conduct.

Serving Councillors and officers must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on it.

The determination of a planning application is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review of the Council's decision and/or complain to the Ombudsman on grounds of maladministration or a breach of the Council's codes of conduct.

Registration and disclosure of interests

The Code of Conduct for Councillors, adopted under the Localism Act, places requirements on Councillors regarding the registration and disclosure of their pecuniary interests and the consequences for a Councillor taking part in consideration of an issue in the light of those interests. The failure to register a disclosable pecuniary interest, participation in discussion or voting in a meeting on a matter in which a Councillor has a disclosable pecuniary interest, are criminal offences. Advice should always be sought from the Council's Monitoring Officer. Ultimately, responsibility for fulfilling the requirements rests with each Councillor.

The provisions of the Code of Conduct for Councillors goes further than the legal requirements of the Localism Act and includes other interests which may impact on the finance or well-being of the Councillor, a relative or close associate or a body of which they are a member. These place further requirements on Councillors for disclosure and on participation in decision making. Councillors should always think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the Councillor's involvement would be appropriate. If members are unsure, they should always be cautious in their approach.

It is always best to identify a potential interest early on. If a Councillor thinks that they may have an interest in a particular matter to be discussed at Planning Committee they should seek advice from the Monitoring Officer as early as possible.

Predisposition, predetermination, or bias

Members of a Planning Committee, (or Local Plan Advisory Group, Cabinet and Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the Committee's decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the considerations presented at the Committee before deciding on how to vote (predisposition). The latter is acceptable, the former is not and may result in a Court quashing such planning decisions.

Section 25 of the Localism Act also provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.

For example, a Councillor who states "the proposed development is a blot on the landscape and I will oppose each and every windfarm application that comes before the Committee" will be perceived very differently from a Councillor who states: "Many people felt the development is ugly and noisy and I will need a lot of persuading that this should be allowed in our area."

If a Councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter. They could, however, register to speak on this matter and could have a substitute take their place on the Committee for that meeting.

The Portfolio Holder responsible for Place can be a member of the Planning Committee, but significant caution needs to be applied and this should only be in limited circumstances, They should not participate in any Council application, ones from Council partners, or ones that come through as part of wider strategic projects or programmes. Like the Portfolio Holder for Place, other members of the Council, who have participated in the development of planning policies and proposals, need to exercise great caution during their involvement in decision making committees. This is because in both instances there is significant scope for predetermination or at least significant public concern of predetermination.

Development proposals submitted by Councillors and officers, and Council development

Proposals submitted by serving Councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be either planning applications or, for example, local plan allocation proposals. Such proposals must be handled in a way that gives no grounds for accusations of favouritism.

For that reason, Councillors should play no part in the consideration of any proposals they submit to the Council.

Any proposals submitted by serving Councillors or officers will be reported to the Planning Committee and not dealt with by officers under delegated powers.

A Councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but as an applicant, the Councillor should not seek to improperly influence the decision.

Proposals for the Council's own development (which includes proposals from Milverton Homes (either solely or as part of another Joint Venture), any Joint Venture (or similar) of which the Council is a partner or Warwickshire County Council), other than for approval of routine minor developments will be treated with the same transparency and impartiality as those of private developers.

However unless the proposals are for minor routine developments, such proposals will be reported to Planning Committee for determination. The Cabinet will be recognised as the applicant in this instance and therefore no member of the Cabinet will be permitted to sit as a member of the Planning Committee for such an item.

Lobbying of and by Councillors

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the Planning Committee.

The Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

Lobbying can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense is exercised by all the parties involved.

As noted earlier in this guidance note, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, Councillors (members of the Planning Committee in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments.

In such situations, members of the Committee should restrict themselves to giving advice about the process and what can and can't be taken into account. Councillors can raise issues which have been raised by their constituents, with officers. If Councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at Committee.

If any Councillor, whether or not a Committee member, speaks at the decision-making committee, they should withdraw from the meeting room once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the Committee may have been influenced by their continuing presence.

The balance of roles between being a local Councillor and taking decisions with an open mind on Committee, is finely balanced and a significant challenge, but is the responsibility of the Councillor.

Planning decisions can only be made on the merits of the application, relevant national and local policies. They cannot be made on a party political basis and the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.

Planning Committee, local plan advisory group members and Cabinet members should, in general, avoid organising support for or against a planning application and avoid lobbying other Councillors.

Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

Members of the Council can request within the specified consultation period i.e. 21 days that an application is referred to Planning Committee for determination. All requests should clearly state the planning reasons why a Committee referral is required.

Pre-application discussions

The Council has an adopted procedure for a Proposed Development Review Forum that can be requested by applicants to engage with the Council head of significant development coming forward. This is available via the Council's website.

Councillors can support applicants in pre-application advise with Officers, however in these instances the Councillor should not have any involvement in the determination of the application, though can address Committee if the matter comes before Planning Committee.

Prior to the meeting

The agenda and reports will be published five clear working days in advance of the meeting, in line with legislation. The agenda will be available to access on the Warwick District Council website and also in paper form at the Town Hall, Parade, Royal Leamington Spa.

All Members of the Committee will be provided with access to the draft presentations by Officers to the Committee, normally at least five clear working

days, in advance of the Committee date. This is to enable Committee members to request the inclusion in the Officer presentation of any further information or images that they consider would be helpful/ would assist the Committee in reaching a decision.

All members will have considered the officers' reports prior to arriving at the meeting of the Committee.

The Chair and Vice-Chair will have a briefing on the items on the agenda ahead of the meeting, normally the Wednesday before the Committee. This will focus on the structure and administration of the meeting, key issues that may arise and a review of the officers' presentations. The Chair or Vice-Chair may request the inclusion of additional information in Officer presentations at this briefing.

Officer reports to Committee

Over a number of years, decisions made by the courts and the ombudsman have clarified what should be contained in officer reports to Committee. To provide guidance, based on these wider clarifications, officer reports on planning applications will include the following:

- The substance of any objections and other responses received to the consultation.
- A clear assessment of the application against the relevant Development Plan policies, relevant parts of the National Planning Policy Framework (NPPF), any financial contributions required from the development (e.g. S106 agreement), and any other material planning considerations.
- a written recommendation for a decision to be made.
- technical appraisals which clearly justify the recommendation.

If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

Public speaking at Planning Committees

Public confidence is generally enhanced and direct lobbying may be reduced by the ability to allow public speaking at meetings.

The Council's procedure rules set out who can speak at meetings. People wishing to speak will fall into five categories, and these are:

- Parish/Town Council;
- Warwick District Towns Conservation Area Advisory Forum;
- Objector(s) to the application;
- Applicants/Supporters of the application; and
- Warwick District Councillor.

Anyone wishing to speak at Planning Committee must register their request to do so by 10am on the working day before (not of) the Committee.

Members of the public are not permitted to circulate any new documents (i.e. documents that have not previously been submitted to the Council on the

relevant application) to the Planning Committee at the meeting, This is because Councillors will not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This is made clear to those who intend to speak by the Civic & Committee Services Team when an individual registers to speak.

At the Planning Committee meeting, messages including via mobile devices should never be passed to, or between individual Committee members, either from other Councillors, Committee members or from the public. Members should be mindful of the perception that may inadvertently be created by the use of mobile devices by Councillors within the meeting. The passing of messages could be seen as seeking to influence that member improperly and may create a perception of bias that would be difficult to overcome. It also creates the possibility for allegations being made that the Planning Committee did not take into account all the relevant information if members are seen to be using their devices and not paying attention to what is being said in the meeting.

Procedure at Planning Committee

The ruling of the Chairman for the meeting on the interpretation of any of either this document and the Council Procedure Rules, will not be challenged at any meeting of the Committee.

All Planning applications with public speakers will be dealt with first, followed by consideration of the remaining items in the order in which they appear above. This may not be the order in which they appear on the published agenda.

The Planning Officer will introduce their report, giving any updates since the preparation of the report.

The names of those persons registered to speak will then be announced by the Chair, in the order of: Parish/Town Councils, Warwick District Towns Conservation Area Advisory Forum, Objectors, Applicants/Supporters and District Councillors.

There will not be a specific formal questions slot.

After all the speakers have finished, the Chair will open the item up to the Planning Committee for questions of clarification of officers and then debate. In the debate no Officer or Councillor will be permitted to address the Committee without the permission of the Chair.

Finally, the Committee will be asked to take a decision on the application.

Reasons for Decisions

The law requires that decisions should be taken in accordance with the Development Plan, unless material planning considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified by reference to relevant Development Plan policies and other material considerations.

The courts have expressed the view that the Committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non-material planning considerations, for example a significant number of people have objected and the application might cause local controversy will rarely satisfy the relevant tests.

Planning Committees can, and sometimes do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome of the application, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of compliance of the application with relevant policies, or of the weight ascribed to material considerations.

Officers will provide advice to any member of the Committee on an application before it, either in advance of or during the meeting. In advance of the meeting Councillors are advised to do this by emailing the case officer and copying in planningcommittee@warwickdc.gov.uk. The responses to these enquiries will be included within the addendum to the agenda published before the meeting. A Councillor may also seek advice from officers via telephone if they so wish.

For any decision the proposer and seconder will identify relevant policies and/or other material considerations and give detailed reasons as to how and why they are applicable to the decision. In doing so, Members need to consider carefully any evidence for or against their reasons.

The Committee can consider adjourning for a few minutes to enable the proposer and seconder to take advice from relevant officers on framing the proposal they wish to put to the Committee.

When the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a copy of the minute of the decision will be placed on the application file.

Officers will assist the Committee in formulating the reasons for a decision but to enable this, the Committee must identify the relevant policy and state how/why this is relevant to their decision. Councillors need to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'. The officers have a duty to provide advice to the Committee and protect the wider Council. Therefore, they will advise on the implications of a contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the Council, should one be made.

In proposing or seconding a decision, particularly where it is proposed to refuse planning permission contrary to the Officer recommendation, the proposer and seconder should understand they may be expected to contribute to written or verbal evidence at appeal including at Public Inquiries to support the Council's reason(s) for refusal.

All applications that are clearly contrary to the Development Plan must be advertised as such and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the Development Plan must be clearly demonstrated.

The application may then have to be referred to the relevant Secretary of State, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this must be included, in full, in that report.

Following the meeting Officers have delegated Authority to "Formulate and issue decision notices following consideration by the Planning Committee in accordance with the resolution of the Planning Committee." This is not to change the decision but used to amplify the decision and ensure standard phrases and reasoning are included, in doing so making the decisions as robust as possible. This is in instances where Committee have changed or added conditions/notes and or come to a contrary view to the recommendation in the report.

Committee site visits

National standards and local codes of conduct also apply to site visits. Decisions to visit sites should be made on a clear and consistent basis to help avoid accusations that visits are arbitrary, unfair or a covert lobbying device. Officers will have visited the site and assessed the scheme against policies and material considerations already.

Site visits should only be used in exceptional circumstances where the benefit of carrying out a site visit is clear and substantial. A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers or interested party; and/or
- the proposal is a significant regional or national development or particularly contentious.

Any Site visit undertaken by the Committee will be in accordance with the procedure set out at Appendix A to this document.

Procedures are in place to seek to minimise the deferral of planning applications to enable a site visit to take place. This is because such a deferral delays the determination of the application and increases both the financial and time costs of doing so.

Prior to the meeting, officers invite members to identify whether there are any sites that they consider necessitate a site visit and if so the reasons, as set out above, for that. This does not stop a site visit subsequently being requested at the meeting of the Committee as it may be further discussion at the meeting identifies a potential need to visit the site. A record of the reasons why a site visit is called will be recorded within the minutes of the Planning Committee.

When a site visit is proposed by a Committee member during debate, the Chair will ask for a seconder for that proposal and take a vote on it. If it is carried the item will stand deferred to enable a site visit. Prior to moving to the next item the Chair will seek any clarifications members of the committee would like to see on site and/or when the report comes back to Committee.

When a site visit is agreed, all Committee members are expected to attend.

A Councillor may visit an application site alone. In such a situation, a Councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. They should also not discuss the application in any form with anyone at the site. Whilst a Councillor might be invited to enter a site (either the application site or an adjoining site) by the owner, it is not good practice to do so on their own, as this can lead to the perception that the Councillor is no longer impartial.

Review of decisions

It is good practice for Councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to ask Cabinet for any policies to be changed or for the Committee to review its procedures.

Training

Planning is complex and as there are currently many changes in planning taking place, Warwick District Council has determined that all Councillors should attend relevant training before sitting on Planning Committee. The Council has also committed to having regular training sessions through the year for the Committee, which all District Councillors are invited to attend.

Appendix A

**Warwick District Council Planning Committee
Site Visit Procedure**

A minibus will be provided for the members of the committee (and any known substitutes) to attend the site visit along with officers.

Form of Site Visit

A site inspection is not a formal meeting of the Planning Committee. It is an informal arrangement to provide members with information to enable a decision to be made at a subsequent Planning Committee in the light of all relevant information available.

Attendance at Site Visits

Officers will obtain the agreement of the applicant/landowner, normally via the agent, for a site inspection to take place on their land, where access is required.

All Members of the Planning Committee, or their substitute, will be expected to be present and relevant Officers of the District Council will attend.

The ward councillors for the ward in which the application site is located will also be informed of the inspection and can attend as an observer if they so wish. If a ward councillor is unable to attend, then they may request a parish/town council representative to attend on their behalf as an observer.

The applicant or their agent will be invited to attend the site visit and this will only be to answer factual questions where members require clarification.

Objectors/supporters/amenity group representatives will not be invited to site inspections.

Site inspection arrangements will be confirmed in writing, normally via email, to applicants/agents, Planning Committee members and relevant ward councillors.

Procedure on Site

The following procedural rules will be observed in the holding of all site inspections:-

- (a) The Chair will control proceedings throughout.
- (b) The Chair will explain that the purpose of the site inspection is to obtain information relevant to the determination of the application. They will summarise the proceedings and constraints as set out below.
- (c) The Chair will introduce the Planning Officer who will describe the proposal with reference to features on the ground and the submitted plans and summarise the relevant issues and material considerations.
- (d) Other Officers may be present to provide other relevant specialist information where required e.g. Highways and Environmental Health Officers.

(e) The Officers will provide clarification on matters relating to the proposal in response to questions from elected Members. The applicant/agent may be asked by the Chair to provide clarification on any factual details that are unclear.

(f) During the site inspection, no separate discussions must take place between Officers or Members and applicants.

(g) No hospitality will be accepted from the applicant or any other party present at the site inspection.

(h) Members may visit an adjoining site to view the impact of the development on an affected property, where a prior request has been made for such a visit and members consider it essential to make such a visit in order to properly determine the application. Such a visit will be subject to all the other provisions set out in this procedure. Requests to visit adjoining affected properties made on the day of the site visit will be at the discretion of the Chair.

(i) The Chair will conclude the site inspection. No indication of the views of Members or the likely outcome of the Planning Committee deliberations on the application will be given. If Members require further information or clarification of any aspect of the development, the Officer attending will be asked to ensure that such information is available by the time of the subsequent Planning Committee meeting.