

PART 12

GOOD PRACTICE PROTOCOL FOR COUNCILLORS AND EMPLOYEES DEALING WITH PLANNING MATTERS

GOOD PRACTICE PROTOCOL FOR COUNCILLORS AND EMPLOYEES DEALING WITH PLANNING MATTERS

1. PURPOSE OF THIS PROTOCOL

- 1.1 This Protocol has been prepared as local guidance to Worcester City Council Members and Employees in dealing with planning matters. It has been formulated having regard to the Third Report of the Committee for Standards in Public Life (the Nolan Committee) and *Guidance* published by the Local Government Association. However, it reflects local circumstances in the City of Worcester.
- 1.2 Failure to follow the recommendations of this Protocol, without good reason, may be regarded by the Local Government Ombudsman as incompatible with good administration or have implications for the standing of councillors and professional employees. Failure to follow the recommendations of this Protocol may result in the matter being considered by Worcester City Council's Standards Committee. **In some circumstances, failure by councillors to comply with this Protocol may also amount to a breach of the Members' Code of Conduct and be liable to investigation by the Standards Committee. This includes not just matters relating to Members' interests but also matters such as bringing the Authority into disrepute, compromising the Authority, disclosing information etc.**
- 1.3 This Protocol covers the conduct of both councillors and employees. Its advice is not restricted only to councillors because they sit on a planning committee, or to professional planning officers only. It relates to the planning process (including policy formulation and development control) and all councillors and employees from Worcester City Council who come into contact with it. It is hoped that this Protocol will foster greater mutual support and understanding between employees and members to the benefit of all involved in the planning process. It should also give the public greater confidence that this Council wishes to carry out its planning responsibilities fairly and openly. This Protocol is separate from and additional to the Members Code of Conduct.
- 1.4 This Protocol covers all committees and sub-committees of the City Council which are entitled to make decisions on planning policies, applications and planning matters. In the main this will be the Planning Committee but may also on rare occasions involve full Council or the Economic Development and Place Sub-committee and references in this Protocol to the Planning Committee should be taken to include reference to these other decision making bodies.

2. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND EMPLOYEES

- 2.1 Councillors and employees have different but complementary roles. Both serve the public but councillors are responsible to the electorate while employees are responsible to the Council as a whole.

- 2.2 Both councillors and employees are guided by codes of conduct. The Members Code of Conduct provides guidance and standards for councillors and the Employee's Code of Conduct performs a similar role for employees. Employees who are Chartered Town Planners are guided by the Royal Town Planning Institute's Code of Professional Conduct. Employees dealing with planning matters should, in particular, and whether or not they are members of the Royal Town Planning Institute, not make or subscribe to any standards or reports which are contrary to their bona fide professional opinions.
- 2.3 The basis of the planning system is the consideration of private proposals against the wider public interest so that in circumstances prescribed by legislation the local planning authority can control development where this is in the wider public interest. Councillors involved in the planning process should consider the views expressed by both sides but they should not favour any person, group or locality nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Planning Committee.
- 2.4 No Councillor may be a member of Planning Committee (or act as substitute) unless he or she has first attended a training course on planning legislation, guidance and practices approved by the Deputy Director – Economic Development and Planning. A Councillor who has already attended such a training course must attend a refresher course at intervals of not more than 4 years after their initial training course or at such shorter interval as the Deputy Director – Economic Development and Planning considers appropriate where there are major changes in planning legislation.
- 2.5 A Councillor who fails to complete a refresher course as required by paragraph 2.4 should immediately vacate his/her seat(s) on the Planning Committee and shall not be eligible to act as a substitute at that meeting or to be appointed to a seat on the Planning Committee until he/she has completed an appropriate refresher training course. **Such a Councillor shall not participate in any discussion on planning matters (whether determining planning applications or formulating policy) at full Council or any other committee of the Council.**

3. **HOSPITALITY AND GIFTS**

- 3.1 The Members' Code of Conduct and the Employees' Code of Conduct have requirements relating to the registration of gifts and hospitality. Councillors and employees should be very careful about accepting gifts and hospitality in any way related to the planning process and the presumption should be that any gift is refused.
- 3.2 During the course of carrying out their duties, employees 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 inevitable employees should ensure that it is of the minimum level. All hospitality received (beyond a simple cup of tea or coffee) should be

immediately notified in writing to the Council's Monitoring Officer who will keep a record of such hospitality.

- 3.3 Gifts (other than purely token and/or trade items such as calendars and diaries) delivered to Council offices in person or by post should be politely returned or given to Charity as the Corporate Director may decide is most appropriate.

4. **DECLARATION AND REGISTRATION OF INTERESTS**

- 4.1 The Members' Code of Conduct contains extensive provisions relating to Members' personal and prejudicial interests and Councillors are referred to this for guidance.

- 4.2 The responsibility for declaring an interest rests with the individual Councillor. If in any doubt the interest should be declared. Further guidance on declaration of interests can be obtained from the Monitoring Officer.

- 4.3 In May of each year, the Monitoring Officer will hold a seminar to assist councillors with the complex subject of Members' Interests and the implications of this Protocol.

- 4.4 Councillors who have substantial property interests or other interests which would prevent them from voting on a regular basis should avoid serving on the Planning Committee. The Council's Monitoring Officer will keep Members' declarations of interest under review and report to the Standards Committee if he considers that their attention should be drawn to the suitability of individual councillors to sit on Planning Committee, having regard to the extent and nature of their interests.

4.5 **Interests of Employees**

Any employee of the Council who has a direct or indirect pecuniary interest in relation to any contract which the Council has or proposes to enter into must declare the fact in writing to the Monitoring Officer, in accordance with Section 117 of the Local Government Act 1972. Employees should follow the following principles:-

- care should always be taken to avoid any suspicion that an employee recommendation may have been influenced by improper motives
- any employee who has a private or personal interest which, in the case of an elected member ought properly to be declared under the Members' Code of Conduct, should immediately inform their Head of Service who, in consultation with Monitoring Officer, will determine whether the employee should take any further role in relation to that matter.

5. **CIRCUMSTANCES IN WHICH COUNCILLORS SHOULD NOT PARTICIPATE IN THE DETERMINATION OF A PLANNING APPLICATION**

5.1 There are a number of situations where although a Councillor has either no personal interest to declare under the Members' Code of Conduct or the personal interest is not prejudicial under that Code so that the Councillor would be entitled under that Code to speak and vote, yet it would not be advisable for the Councillor to participate in the determination of a planning application because he or she could reasonably be regarded as having pre-judged the application before attending the meeting. Such pre-judging could leave the Council at risk of an application for judicial review or an ombudsman finding for maladministration.

5.2 Therefore, Councillors should not in the following circumstances participate in the determination of planning applications:-

5.2.1 where the Councillor is a member of another public body e.g. the County Council or a Parish Council and has expressed a view on the planning application at meetings of that body or otherwise publicly associated himself or herself with the application;

5.2.2 where the Councillor has been appointed by the City Council to the body which is applying for planning permission and the Councillor has either participated in the decision to apply for planning permission or publicly associated himself or herself with the application;

5.2.3 where the application is by the City Council and the Councillor is a Member of a Committee which has approved the scheme in respect of which the application is made

5.2.4 where the Councillor has publicly supported a particular outcome or become involved in high profile active lobbying for a particular outcome; and

5.2.5 where the Councillor has been involved in pre-application discussions, other than in accordance with the provisions of this Protocol.

5.3 In the circumstances set out in paragraph 5.2, the Councillor should declare their reason for not participating in the decision and leave the meeting for the duration of the discussion on the item. In the circumstances set out in paragraph 5.2.3, a Councillor may, if he or she considers it appropriate, remain in the meeting and speak on the planning application but shall not vote on the planning application.

6. **DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND EMPLOYEES AND COUNCIL DEVELOPMENT**

6.1 The advice in this Section applies to both planning applications and Development Plan policy matters.

- 6.2 Serving councillors and employees should never act as agents for people pursuing a planning matter with their authority. It is also advisable for them not to act in this capacity in respect of proposals in adjacent local authority areas especially if the developers involved may also have involvement in proposals in the City from time to time.
- 6.3 Should Councillors or employees submit their own proposals to the authority they serve, they should declare the interest to the Monitoring Officer and take no part in its processing; such proposals and the fact that a declaration of interest has been lodged should be identified on the relevant planning files.
- 6.4 Proposals of this nature should be reported to Committee and not dealt with under delegated power.
- 6.5 Development proposals by the Council are to be treated in the same way as those by private developers, particularly in relation to employees' advice. Such proposals will not be delegated to the Deputy Director – Economic Development and Planning for decision, however small or non-contentious and must always be reported to Committee for determination.

7. **LOBBYING**

- 7.1 Although lobbying is a normal and perfectly proper part of the political process, it 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. Councillors who are members of the Planning Committee need to take account of the public expectation that a planning application will be processed and determined in a transparently open and fair manner in which members taking the decision will take account of all the evidence presented before arriving at a decision and that to commit themselves one way or the other before hearing all the arguments makes them vulnerable to an accusation of partiality. Councillors who are appointed by the Council as non-voting observers to the Conservation Areas Advisory Committee may attend those meetings to inform themselves of the views of that Committee, but should take care to comply with paragraphs 7.2.1 and 7.2.2 of this Protocol.
- 7.2 **Councillors who are Members of the Planning Committee determining any particular planning application or will act as substitute for such Members** should act in accordance with the following principles in relation to lobbying:-
- 7.2.1 Care should be taken in expressing an opinion on any planning proposal; councillors should always indicate that they will keep an open mind until all the facts are known and that they have heard both sides of the argument. Before this stage it is better to restrict themselves to giving procedural advice, directing those who are lobbying to planning officers, so that their representations can be included in the officer's report.

- 7.2.2 Councillors who find themselves in a situation which is developing into lobbying should always explain that whilst they can listen to what is said, they are required to keep an open mind and are constrained from expressing a firm point of view or an intention to vote one way or another, otherwise they will have to state their position at the Committee meeting and not take part in the subsequent decision. (A standard letter to send in response to approaches of this nature is available to Members).
- 7.2.3 Any discussions with lobbyists should make clear that a member's comments are personal rather than those of the Council and provisional pending other evidence, consultations and officer advice.
- 7.2.4 If members choose to visit sites prior to Committee they must have regard to the principles outlined above and, in order to ensure openness and fairness, they should consider whether to visit a neighbouring objector's property also. It may be better not to accept invitations to view sites if Councillors believe that this could be used as an opportunity to exert undue pressure by an agent or applicant.
- 7.2.5 If a councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that councillor to argue convincingly when the committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented to the committee. The proper course of action for such a member would be to make an open declaration and not vote. **A Ward Councillor who seeks to represent the views of his or her electorate is in a less restricted position than other Members of the relevant committee provided that he or she has not been involved in high profile active lobbying for a particular outcome.** It should be possible for such a Ward Councillor to present the views to a particular body of local opinion whilst waiting until the meeting of the Planning Committee and having all the evidence presented before making a final decision. Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer **in advance of** the meeting, although the final decision rests with the individual councillor.
- 7.3 **Councillors who are not Members of the Planning Committee determining a particular planning application and do not intend to act as substitutes for Members of that Committee in respect of the particular planning applications** are in a less restricted position with regard to lobbying. Nevertheless, they should comply with the following guidelines:-
- 7.3.1 Councillors should not act as an advocate or agent for planning applications or planning policy matters to be determined by the City Council.
- 7.3.2 Councillors should not put pressure on planning officers for a particular recommendation.

- 7.3.3 Political group meetings should not be used to decide how councillors will vote on individual planning applications. Requests for Officers to attend Group meetings to explain any planning proposals will be dealt with in accordance with the Council's Protocol for Member/Officer relations. Senior employees may accept invitations to explain complex proposals to a political group meeting on the understanding that a similar opportunity is offered to the other groups.
- 7.3.4 Without authorisation, councillors should not negotiate detailed planning matters with lobbyists.
- 7.3.5 It is perfectly acceptable for a ward councillor, or a councillor who in an official capacity has expert or detailed knowledge of a relevant matter to address the Planning Committee, but it is inappropriate for a councillor who is not a Ward Member to organise support or opposition, or lobby other councillors informally.

8. PRE-APPLICATION DISCUSSIONS

- 8.1 In view of the Council's scheme for allowing applicants and objectors to make representations to the Planning Committee and the Council, councillors should not normally be involved in pre-application discussions and should not in any event be involved in such discussions with applicants once a planning application has been submitted.
- 8.2 Pre-application discussions with planning officers will comply with the following guidelines:-
- 8.2.1 It should always be made clear at the outset that any discussions are on a without prejudice basis, and where councillors are involved any views expressed by them are personal and provisional.
- 8.2.2 In the case of advice given by planning officers it should always be made clear that it is always subject to review at a more senior level and the final recommendation lies with the Head of Service and not at case officer level.
- 8.2.3 Advice given should be consistent; and based upon the development plan, government planning policy guidance and any relevant material considerations.
- 8.2.4 A written note should be made of any meetings and placed upon the relevant file - 2 or more officers are to attend potentially contentious meetings and a follow up letter is advisable, at least where documentary material has been left with the Council.
- 8.2.5 Care must be taken to ensure advice is not partial and for the avoidance of doubt should be confirmed in writing.
- 8.3 If Councillors who are Members of the Planning Committee, or will act as substitute at the Committee in relation to the particular planning application are involved in pre-application discussions, the principles set

out in paragraph 8.2 should also be applied. In addition, councillor participation should be authorised **in advance** by the Planning Committee; the councillors should be accompanied by appropriate professional officers (always to include a senior planning officer); and the involvement of councillors in such discussions should be recorded in any subsequent committee report.

- 8.4 Wherever possible, such meetings should be held on City Council premises during normal office hours. Meetings on site may sometimes be helpful, but regard should be had to the guidance on lobbying and hospitality. Invitations to meet in hotels or private offices, especially those relating to developers themselves should nearly always be avoided.
- 8.5 The principles set out in paragraph 8.4 apply equally to meetings between developers and Ward Members whether before or after an application has been made and even if the Ward Member/Members is/are not a Member of the Planning Committee which will determine the application.

9. **OFFICER REPORTS TO COMMITTEES**

- 9.1 All applications considered by the Planning Committee will be the subject of written reports making a firm written recommendation from planning officers incorporating lists of technical consultees and planning constraints and the basis on which the recommendation is made. The report will be accompanied by an oral officer presentation covering the development plan, site or related history and any other material considerations.

The officer presentation will refer to displayed plans and photographic slides of both site and submitted drawings. Full written reports will be prepared on all major or contentious applications and all applications considered by the Council.

- 9.2 Copies of all written representations received in respect of each application will be sent to all members of Planning Committee at the time the agenda is circulated and any late representations received will be circulated at the meeting. All such representations will be made available for inspection by the public on request.
- 9.3 Contentious applications and all applications containing recommendations contrary to the provisions of the Development Plan will be subject to full written reports. Such reports must be accurate and cover, amongst other things, the substance of objections and the views of people who have been consulted, a clear explanation of the development plan, site or related history and any other material considerations, a technical appraisal which justifies the recommendation and where a departure from the Development Plan is recommended, the material considerations which justify this.
- 9.4 Reports to the Council on planning applications will comply with paragraph 9.3 and include copies of all written representations received in accordance with paragraph 9.2.

9.5 Proposed heads of terms for Section 106 Agreements must always be reported openly and in writing to the Planning Committee if and when they are considering such planning applications.

10. **PUBLIC SPEAKING AT THE PLANNING COMMITTEE**

10.1 The Council operates a scheme for allowing applicants and members of the public to make representations to the Planning Committee on planning applications. Details of these are set out in the Committee Procedure Rules and the Council Procedure Rules.

10.2 This can lead to considerable numbers of applicants and members of the public attending Planning Committee meetings. Councillors and Officers should be careful to avoid undue informal conversation between themselves and applicants or members of the public as this could give an impression of over familiarity and bias in favour of either applicants or objectors.

10.3 In considering public representations made at Planning Committee meetings, Councillors should ensure that they concentrate on those matters raised which reveal material planning considerations in relation to the particular application. Councillors must not regard public opposition of itself as grounds for refusing a planning application as to do so would be illegal.

11. **DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

11.1 From time to time the Planning Committee will make decisions which are contrary to officer advice. It is important that on these occasions the Committee makes clear the reasons for making its decision, that clear reasons are given in the case of a refusal and that these reasons can be supported by sufficient evidence to justify them and clear conditions imposed in the case of the approval of an application. The precise wording of reasons in the case of a refusal and list of conditions in the case of an approval may be delegated in accordance with paragraph 11.4.

11.2 Before overturning an officer recommendation, the Planning Committee should give the officer concerned an opportunity to explain the implications of a contrary decision, including liability to an appeal being lodged and/or costs being awarded against the Council.

11.3 The Minutes of the Planning Committee should always include a detailed minute explaining why an officer recommendation was rejected and a copy of this should be placed on the planning application file.

11.4.1 If it is not possible to agree at the meeting the precise wording of the grounds for refusal or the list conditions to be imposed, the decision is delegated to the Director of Planning and Governance who, in consultation with the Chair and Vice Chair of the Planning Committee, provides either the precise wording of the grounds for refusal or list of conditions dependent upon the resolution made.

- 11.4.2 In respect of refusals the precise wording of the grounds for refusal are considered and agreed by the Chair and Vice Chair and, subject to any amendments they have sought, the decision is issued. In the event that either the Chair or the Vice Chair do not agree the wording of the grounds for refusal, either of them may refer the application back to the Planning Committee to agree the wording.
- 11.4.3 In respect of approvals the proposed list of conditions to be imposed is considered and agreed by the Chair and Vice Chair and, subject to any amendments they have sought, the decision is issued. In the event that either the Chair or the Vice Chair do not agree the list of conditions to be imposed either of them may refer the application back to the Planning Committee to agree the conditions.
- 11.4.4 Where an approval would require a S106 legal agreement to be secured to control the development, the heads of terms will be drawn up by the Director of Planning and Governance and presented to the Chair and Vice Chair for consultation. If agreed, the Director of Planning and Governance will negotiate the actual S106 Agreement and issue the decision. In the event that either the Chair or the Vice Chair do not agree the heads of terms either of them may refer the application back to the Planning Committee to agree the heads of terms.
- 11.4.5 For the avoidance of doubt the reference to Chair and Vice Chair in this subsection refers to the Chair and Vice Chair appointed to those positions by the Council and not any Member who may have acted as a substitute at any given meeting of the Planning Committee.
- 11.5 All meetings of the Planning Committee and Chairmen's briefings for such meeting will be attended by a suitably qualified legal officer.

12. **COMMITTEE SITE VISITS**

- 12.1 At each meeting the Planning Committee shall decide whether or not to carry out site inspections in respect of any of the applications to be determined by that Committee. Requests for site inspections from members of the Committee should be made to the Deputy Director – Economic Development and Planning no later than 5.00 p.m. on the second day before the meeting of Committee.
- 12.2 Where the Planning Committee decides to make a site inspection in accordance with paragraph 12.1, the Committee meeting shall adjourn to enable the Committee members to visit the site along with appropriate officers. So far as possible, the site visit shall be by Members of the Committee and Officers only and neither the applicant nor objectors shall make representations to the Committee at a site visit.
- 12.3 Site visits may be held in the following circumstances:-
- 12.3.1 the impact of the proposed development is difficult to visualise from the plans and any supporting material including photographs taken by officers;
- 12.3.2 it is difficult for the comments of the applicant and/or objectors to be understood solely in writing;
- 12.3.3 the proposal is particularly contentious;

12.3.4 where a site visit will materially assist the Committee's consideration of the issue;

12.4 The Minutes of the Planning Committee will record the reasons why particular site inspections were held and the vote taken.

12.5 The procedure for site visits will be as follows:-

- Members of the Planning Committee together with relevant officers travel to the site by mini-bus.
- On arrival at the site, the designated planning officer explains the main planning issues to the Committee.
- Inspections will be undertaken in a formal and professional manner.
The Committee should stay together as a group.
- There will be no inter-action between Members and applicants or objectors at the site visit beyond the common courtesies to be expected when visiting someone else's property.
- Members may ask questions of the officers and draw attention to issues relevant to the site visit.
- Members will not debate the merits of the proposal on the site visit or on the way to or from the site visit.
- Members who have declared a prejudicial interest or who, for any other reasons, do not intend to participate in the planning decision, will not participate in the site visit.
- The Chairman will close the site visit and all Members will leave the site at the same time.
- The Chairman may alter or terminate any visit at his/her discretion.

13. **REGULAR REVIEW OF DECISIONS**

13.1 The Audit Commission's Report "Building on Quality" recommends that councillors should visit a sample of implemented planning decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision making, through strengthening public confidence and can help with reviews of planning policy.

13.2 Once a year, the Deputy Director – Economic Development and Planning will report to the Planning Committee on a sample of implemented planning permissions in a wide range of categories - major and minor developments, permitted departures, upheld appeals, listed building works and enforcement cases. Arrangements will be made for the Committee to visit the developments contained in the report. At the next meeting of the Planning Committee following the visits, the Committee will be requested to review each development and consider whether it gives rise to the need to review any policies or practices.

14. **COMPLIMENTS, COMPLAINTS AND RECORD KEEPING**

14.1 Regular monitoring of planning files will be undertaken to ensure complete and accurate record keeping.

14.2 Complaints in relation to planning matters and regarding compliance with this Code of Conduct will be investigated in accordance with the Council's

Complaints Procedure. An annual report will be made to Planning Committee on formal compliments and complaints made under the Council's complaints procedure and on any cases where the Local Ombudsman has decided to investigate.