

PART 12

GOOD PRACTICE PROTOCOL FOR COUNCILLORS AND EMPLOYEES DEALING WITH PLANNING MATTERS

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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 guidance periodically issued by Committee for Standards in Public Life (the Nolan Committee) and 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 under the Standards Committee's published Procedures. 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 Councillors and officers should avoid any appearance of bias or having 'predetermined' views when making a decision on a planning application or policy. If any councillor or officer has any conflict of interest that would result in pre-determined or bias, this should be declared to the Monitoring Officer, and they should remove themselves from any part of the decision making process.
- 2.5 No Councillor may be a member of Planning Committee (or act as substitute) unless they have first attended a training course on planning legislation, guidance and practices approved by the Corporate Director - Planning and Governance. A Councillor who has already attended such a training course must attend a refresher course at intervals of not more than 2 years after their initial training course or at such shorter interval as the Corporate Director - Planning and Governance considers appropriate where there are specific changes in planning legislation.
- 2.6 A Councillor who fails to complete a refresher course as required by paragraph 2.4 should immediately vacate their 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.**
- 2.7 All meetings of the Planning Committee and Chair and Vice Chair briefings for such meeting will be attended by a suitably qualified legal officer.

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 Monitoring Officer 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 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.

4.4 **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 against the soundness of the planning decision taken, and/or an ombudsman finding for maladministration.
- 5.2 Therefore, Councillors should not in the following circumstances participate in the determination of planning applications (this is not an exhaustive list):
- - 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 pre-determined 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 or within a neighbouring South Worcestershire Authority.
- 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 or any part of the decision. The declaration of interest must be identified on the relevant planning files.
- 6.4 Proposals of this nature must be reported to Committee and not dealt with under delegated powers. The Councillor or employee should not attend planning committee leaving any representations to be made by their appointed agent.
- 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 Corporate Director - Planning and Governance 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 Advisory Panel 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 all 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.
- 7.2.3 Any discussions with lobbyists should make clear that a councillor's comments are personal rather than those of the Council and provisional pending other evidence, consultations and officer advice. Councillors should as soon as practicable advise the Head of Planning or the Service Manager – Development Management of any correspondence or discussions, so that they can be placed on the public file.
- 7.2.4 If members choose to visit sites prior to the Committee meeting 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 is not predetermined (see guidance above).** 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 Councillors should not negotiate detailed planning matters with any third parties; under the Constitution, it is officers who are empowered to undertake this role.
- 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 be involved in pre-application discussions, unless it has been specifically agreed by the Corporate Director - Planning and Governance. Such involvement will be led by the lead Planning Officer. Councillors should not be involved in any discussions with applicants once a planning application has been submitted, except where as Ward Councillors they are acting as a liaison point between applicants and officers, for the purpose of checking progress with applications.
- 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.
 - 8.2.2 In the case of any verbal 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. It is recommended that two or more officers attend meetings relating to major or potentially contentious sites.
 - 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 response to the pre-application enquiry will be provided by the Council and kept on file.

8.2.5 Care must be taken to ensure advice is not partial.

8.3 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.

9. **OFFICER REPORTS TO COMMITTEES**

9.1 All applications considered by the Planning Committee will be the subject of written reports making a clear 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.

9.2 The officer presentation will refer to displayed plans and photographic slides of both site and submitted drawings.

9.3 Proposed heads of terms for Section 106 Agreements will where necessary be provided as part of the committee report and recommendation.

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 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 unlawful.

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 reasons along with appropriate conditions imposed in the case of the approval of an application. The precise wording of reason(s) for the decision, list of conditions/heads of terms for a S.106 in the case of an approval, and relevant national and local policies relating to the particular decision 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.
- 11.3 The Minutes of the Planning Committee meeting should always include a detailed minute explaining why an officer recommendation was rejected.
 - 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 - 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.
 - 11.4.3 In respect of approvals the proposed reason for approval and the 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.
 - 11.4.4 Where such 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 - Planning and Governance and presented to the Chair and Vice Chair for consultation. If agreed, the Corporate Director - Planning and Governance will negotiate the actual S106 Agreement and issue the decision.
 - 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.

12. **COMMITTEE SITE VISITS**

- 12.1 Prior to each meeting the Chair or Vice Chair 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 Head of Planning no later than 5.00 p.m. on the day before Chair and Vice Chair briefing. The request should clearly set out the reasons why a site visit is considered to

be required. The Chair or Vice Chair will take full account of the request along with Officer comments and any other relevant factors, and the decision of the Chair or Vice Chair is final. Any decision made will be communicated to the Councillor requesting the site visit.

12.2 Any site visit shall be arranged by Committee Services and shall take place prior to the Planning Committee meeting. 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 The procedure for site visits will be as follows: -

- Members of the Planning Committee together with relevant officer's travel to the site by their own transport unless a specific travel arrangement has been agreed.
- 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 interaction 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.
- At the close of the site visit all Members will leave the site at the same time.
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13. **REGULAR REVIEW OF DECISIONS**

13.1 The Planning Committee will receive and consider an annual report looking back on the previous year's work programme.

13.2 The Planning Advisory Service (PAS) guidance in Probity in Planning (2019) 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.

13.3 As part of the Committee's annual report, the Corporate Director - Planning and Governance will report to the Planning Committee on a suggested 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. The Committee will be given the opportunity to suggest additional or alternative sites, with the final list being agreed by the Chair or Vice Chair. Arrangements will be made for the Committee to visit the developments.

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 and will be overseen by the relevant governance arrangements set out in the Council's Constitution.
- 14.3 As part of the Committee's annual report, the Corporate Director will update the Committee on any formal compliments and complaints made under the Council's customer complaints and feedback policy and on any cases where the Local Government Ombudsman has decided to investigate.