

REPORT TO:	DEVELOPMENT CONTROL COMMITTEE	AGENDA ITEM:
DATE OF MEETING:	24TH AUGUST 2004	CATEGORY: DELEGATED
REPORT FROM:	MONITORING OFFICER	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	ANDREA McCASKIE (5831)	DOC:
SUBJECT:	MEMBERS' PLANNING CODE OF GOOD PRACTICE	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: DC01

1.0 Reason for Exempt

1.1 Not applicable.

2.0 Recommendations

2.1 That the Members' Planning Code of Good Practice be referred to the Standards Committee for comments prior to consideration and adoption by the Full Council.

3.0 Purpose of Report

3.1 To consider a Members' Planning Code of Good Practice for referral to the Standards Committee for comments prior to consideration and adoption by the Full Council.

4.0 Detail

4.1 Members will recall that at the Planning Training Update held on 7th June 2004, reference was made to a Planning Code of Good Practice which was in the course of preparation for future consideration by the Committee.

4.2 The proposed Code of Good Practice is now attached at Annexe 'A' for Members' consideration. This has been adapted for this Council's purposes from the model Code prepared by the Association of Council Secretaries and Solicitors and is designed to assist and protect Members during their involvement in the various stages of the planning process. The Code will supplement the existing Members' Code of Conduct, which all Members have agreed to observe in a written undertaking.

4.3 It is proposed that the Code of Good Practice should be referred to the Standards Committee for its comments prior to final consideration and adoption by the Full Council.

5.0 Financial Implications

5.1 None.

6.0 Corporate Implications

6.1 None.

7.0 Community Implications

7.1 None.

8.0 Background Papers

8.1 Proposed Planning Code of Good Practice



SOUTH DERBYSHIRE DISTRICT COUNCIL
Members' Planning Code of Good Practice

Background

Introduction

1. Relationship to the Members' Code of Conduct
2. Development Proposals and Interests under the Members' Code of Conduct
3. Fettering Discretion in the Planning Process
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Members' Planning Code of Good Practice

Background

This Code of Good Practice has been prepared based on the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice in Planning Matters in the light of the introduction of the new ethical framework and in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England.

Introduction

The aim of this Code of Good Practice: to ensure that in the planning process there are no grounds for suggestion that a decision has been biased, partial or not well founded in any way.

The key purpose of Planning: to control development in the public interest.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice applies: this Code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- Do apply the rules in the Members' Code of Conduct first, which must always be complied with.
- Do then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purpose of planning control. If you do not abide by this Code of Good Practice, you may put;

the Council at risk of proceedings on the legality or maladministration of the related decision, and

yourself at risk of either being named in a report made to the Standards Committee or the Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

2. **Development Proposals and Interests under the Members' Code of Conduct**

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly. **Where your interest is personal and prejudicial:**

Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.

Don't try to represent (Ward/Local) views, get another (Ward/Local) Member to do so instead.

Don't get involved in the processing of the application.

Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.

Do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitation on you in presenting that proposal than would apply to a normal member of the public. (For example, where you have a personal and prejudicial interest in a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to observe the Meeting's consideration of it from the public gallery).

Do notify the Monitoring Officer in writing of your own planning application and note that:

notification to the Monitoring Officer should be made no later than submission of the application;

the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and

it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers.

3. Fettering Discretion in the Planning Process

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the Planning Authority and of you hearing the officer's presentation and evidence and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, **or** could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its merits).
- **Do** also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:

You have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:

- another local or public authority of which you are a member; or
- a body to which you have been appointed or nominated by the Council as its representative; or

You are a trustee or company director of the body submitting the proposal and were appointed by the Council.

If you feel that that you have fettered your discretion, you should always disclose a prejudicial as well as a personal interest and withdraw.

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a District and County Councillor), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body
- you make it clear to the consultee body that:
 - a) Your views are expressed on the limited information before you only;
 - b) You must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
 - c) You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
- you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- **Don't** speak and vote on a proposal where you have fettered your discretion and withdraw from the room.
- **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the Minutes.
- **Do** take the opportunity to exercise your separate rights as a Ward/Local Member (where this has been granted by the Authority's Procedure Rules or by the consent of the Chair and Committee).

4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Development Control Manager/Planning Services Manager to organise it. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any particular course of action; that the meeting is properly recorded on the application file; and the record of the meeting is disclosed when the application is considered by the Committee.

- **Do otherwise:**
 - follow the rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Development Control Manager/Planning Services Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposal.
- **Do** remember that the presentation is not part of the formal process of the debate and determination of any subsequent application. This will be carried out by the appropriate Committee of the Planning Authority.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

5. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community, not just to people in your Ward/Local area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 in accordance with the Authority's rules on gifts and hospitality.
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager/Planning Services Manager at the earliest opportunity.

- Do promptly refer to the Development Control Manager/Planning Services Manager any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comment to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or Ward/Local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

6. **Lobbying by Councillors**

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby, promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, Council for the Protection of Rural England, Ramblers Association or a local civic society/action group, but disclose a personal interest where the organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- **Don't** excessively lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

- **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

7. Site Visits

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policies or precedent implications and the specific site factors need to be carefully addressed.
- **Do** ensure that any information that you have gained from the site visit is reported back to the Committee, so that all Members have the same information.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ensure that at all times, you follow the movements of the Chair on the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters that are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward/Local Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that it might prejudice your ability to participate in the decision to engage in a dialogue with them.
- **Don't** express opinions or views to anyone. The merits of the application will only be debated in the Committee Meeting at the Council offices.
- **Do** proceed immediately to the next designated site at the conclusion of the site visit at the instruction of the Chair, without entering into discussions with any party.
- **Don't** enter the site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:

- you feel it is essential for you to visit the site other than through attending the official site visit; and
- you have first spoken to the Development Control Manager/Planning Services Manager about your intention to do so and why (which will be recorded on the file); and
- you can ensure you will comply with these Good Practice rules on site visits.

8. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Planning Services Manager/Development Control Manager, which may be incorporated into any Committee report).
- **Do** recognise that the officers are part of a management structure and will only discuss a proposal, outside of any arranged meeting, with a Service Manager or those officers who are authorised by their Service Manager to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasions be at odds with the views, opinions or decisions of the Committee or its Members.

9. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, your reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is

simply insufficient information before you, request that further information. If necessary, defer or refuse.

- **Don't** vote or take part in the Meeting's discussion on a proposal unless you have been present to hear the entire debate.
- **Do** have recorded the reasons for the Committee's decision to defer any proposal and that it is in accordance with the Council's protocol on deferrals (as set out in the contents page of the report of the Planning Services Manager within the agenda of each Meeting).
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote being recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

10. **Training**

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.