

**CAMBRIDGESHIRE COUNTY COUNCIL**  
**CODE OF DEVELOPMENT CONTROL BEST PRACTICE FOR**  
**MEMBERS**

**1. INTRODUCTION**

- 1.1 This Code has been prepared in order to set out clearly the way in which planning applications determined by the County Council will be dealt with. The Code applies to both councillors and officers who become involved in operating the planning system.
- 1.2 The aim of the Code is to give clear guidance to County Council members and officers on how they deal with planning matters. In doing so, it should also ensure that the public have confidence that the decision making of the County Council is open and fair.
- 1.3 Planning matters determined by the County Council are normally decided
- by the Development Control Committee
  - by the full County Council
  - by Council officers acting under delegated powers.
- This Code applies whoever takes the decision.
- 1.4 This Code applies to appointed and substitute members of the Development Control Committee. References in the Code to Committee members therefore include substitutes. Similarly, references to the Development Control Committee include the full Council if it takes the planning decision.
- 1.5 The Code applies to the full range of planning matters considered by the County Council: planning applications (both where the County Council takes the decision and where it is being consulted), enforcement matters and development structure and local plan policies (whether the plan is promoted by the County Council, the City Council or a District Council).
- 1.6 This Code applies to Members and Officers at all times when they are involving themselves in the planning process. This includes taking part in meetings of the Development Control Committee, exercising the functions of the Council as Planning Authority or when involved in less formal occasions such as meetings with officers or public consultative meetings.
- 1.6 If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before the start of the meeting.
- 1.7 The failure to abide by the provisions of this code and that of the Members' Code of Conduct may expose the Council to the risk of legal proceedings regarding the legality of the process or complaint to the Ombudsman on the grounds of maladministration.

~~The Code is in addition and complementary to the Council's Code of Conduct for Members and to relevant provisions within the Council's Constitution.~~

## **2. BASIC PREMISES**

2.1 ~~The basis of the planning system is to regulate the development and use of land the consideration of land use proposals against in the public interests.~~

2.2 ~~The successful operation of the planning system relies on ensuring that officers and members act in a way which is not only fair but is clearly seen to be so. Your role as decision maker in this process is to make planning decisions openly, impartially, with sound judgement and for relevant reasons~~

2.3 ~~The decision making process in planning matters is described as akin to a 'quasi judicial' process due to its formal nature and this means that the decision makers are required to consider carefully all the interests and views involved. Members have a special duty to represent the views of their constituents, but their over-riding duty is to the whole community of Cambridgeshire.~~

2.4 ~~Decision makers are also required to have regard to They should therefore vote in the interests of the whole County and in accordance with national and local planning guidance in relation to planning matters and the advice of their professional advisors. However, a local member can participate in the decision making process for a particular planning application, provided the Code is abided by.~~

2.54 ~~Planning applications submitted by the County Council for its own development are treated in the same way as those for private developers, both in terms of procedures and the assessment of material considerations. There is no right of appeal against an adverse decision by the Committee.~~

## **3. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT**

3.1 ~~The Members' Code of Conduct is the primary code for Members and should be complied with at all times. The provisions of this code are supplementary guidance and apply specifically in the context of the planning process.~~

## **4 PRE-DETERMINATION - FETTERING YOUR DISCRETION**

4.1 ~~In addition to considering the Members' Code of Conduct, decision makers should also be aware of a legal concept which can, if established, render a decision void and challengeable. Such challenges are costly and time consuming but can be avoided by following some basics rules. The concept is generally referred to as pre-determination or fettering of your discretion, and describes the situation where a~~

decision maker hasn't properly considered a decision because they have, or appear to have, a 'closed mind' by appearing to have made up your mind 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 your hearing the officer's presentation and evidence and arguments on both sides.

4.2 In recent decided court cases, a closed mind is often evidenced by the words or conduct of the decision maker, for instance, where they have expressed total opposition to a proposal prior to the decision being made. Active membership of a pressure group may also constitute evidence of a closed mind. 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.

4.3 It is important to be aware that a Member is likely to be found to have fettered their discretion where the Council is the landowner, developer or applicant and the Member has acted, or could be perceived as having acted, as 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 planning merits.)

4.4 This does not mean that Members' are precluded from making any comment whatsoever. The law recognises that Members' may have legitimately held views on matters of local interest, indeed they are expected to, and they may have 'pre-dispositions' towards certain outcomes and this will not be deemed to have fettered their discretion, provided that they keep an open mind and don't make a final decision until they have heard all the relevant information at the meeting itself.

## **TRAINING**

- 3.1 All members serving on the Development Control Committee will be trained in planning procedures within three months of being appointed to the Committee.
- 3.2 To ensure that all members serving on the Development Control Committee are familiar with planning procedures, a pool of Development Control Committee substitute members will be appointed. Full training will be provided for the pool of substitute members, with annual refresher training for members and substitutes, as necessary.

## **4. ~~DECLARATIONS OF INTEREST~~**

- ~~4.1 The Council's Code of Conduct for Members sets out requirements and guidance for councillors on declaring interests and the consequences of having such interests. These must be followed scrupulously and councillors should review their situation regularly.~~

- ~~4.2 A register of members' interests is maintained by the Council's Monitoring Officer. If a member is present at a meeting when an item in which they have an interest is being considered, that member must consider the nature of their interest and declare the interest and, if appropriate, withdraw from the meeting (unless a dispensation has been granted by the Standards Committee).~~
- ~~4.3 Members should seek advice from the Monitoring Officer where they are concerned that there may be a conflict of interests.~~

## **5. PRE-APPLICATION/POST SUBMISSION DISCUSSIONS**

5.14 Members of the Development Control Committee should preserve their impartiality as decision-makers and avoid, unless absolutely necessary and in accordance with conditions set out below, not taking part in pre-application or post-submission discussions with developers or other interested parties regarding development proposals. If Members are approached in connection with a particular planning matter, they should refer the person to the relevant planning officer dealing with the matter.

5.2 In exceptional circumstances it may be appropriate for members to attend pre-application or post-submission discussions, but Members should never organise such meeting themselves and only attend such meetings with never without a planning officer present. and they should ensure that clear notes are made of the meeting and added to the planning file. Both supporters of and objectors to the proposal should be included in such discussions, either together or separately. The officer(s) 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 that a record of the meeting is disclosed when the application is considered by the Committee.

## **6. COMMITTEE SITE VISITS**

- 6.1 Formal site visits will only be held in exceptional circumstances where there is a clearly identified benefit from holding one. A record should be kept of why the visit is being held and who attended. A site visit will usually take place be when a proposal is controversial or particularly complex, and where the impact is difficult to visualise or assess from the submitted information and plans. The reason for the site visit will be minuted.
- 6.2 The purpose of the site visit will be to make a "tour of inspection" by the Committee, accompanied by an officer(s) who will point out any relevant issues and areas of interest and importance. It is not a meeting where any decisions will be made or a formal minute taken. Decisions will be taken at the next appropriate formal meeting of the Development Control Committee.
- 6.3 All members of the Committee will be invited to attend the site visit, together with the local member(s). Where a proposal would have a significant impact

on an adjoining division or divisions the adjoining local member(s) will also be invited.

- 6.4 All members attending site visits should be accompanied by an officer.
- 6.5 If access to private land is necessary, then officers will secure the prior agreement of the landowner/operator. Once on the site, the landowner/operator/applicant will be advised that only factual answers or information should be given and that lobbying will be unacceptable.
- 6.6 Members should avoid discussions during the visit.

## **7. LOBBYING OF AND BY COUNCILLORS**

- 7.1 All members of the Development Control Committee should avoid expressing an opinion which may be taken as implying they have reached a conclusion or otherwise committing the County Council on a planning application, until all the relevant information, evidence and arguments have been put before the Committee.
- 7.2 If Committee members do express an opinion then they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at the Development Control Committee meeting.
- 7.3 Local members who are also members of the Committee are free to participate in the decision making process, provided they have abided by the provisions of this Code and the Council's Code of Conduct for Members. Where they feel it is appropriate to do so, they may give support to a particular body of opinion in advance of the Committee, provided it is clear that they will not reach a final view on the proposal until such time as all the relevant information, evidence and arguments have been put before them.
- 7.4 Members of the Committee will not organise support or opposition for a proposal or lobby other members (other than when addressing the Committee).
- ~~7.5 Local members who are not members of the Committee may give support to a particular body of opinion in advance of the Committee meeting at which the proposal is to be considered. However, local members may wish to wait until the Committee meeting when all the evidence is heard before coming to a decision on whether or not to support the proposal.~~
- 7.56 Members should avoid placing themselves in a position that could lead to the public thinking they are receiving preferential treatment for themselves, for friends or relatives or any firm or body with which they are personally connected. Examples include using their position to discuss a planning application personally with officers when other members of the public would not have the opportunity to do so.

7.6 Members should not accept gifts or hospitality from any persons involved in or affected by a planning proposal. If a degree of hospitality is unavoidable, ensure it is minimal, its acceptance is declared as soon as possible and remember to register the gift or hospitality in the Register of Members' interests where its value is over £25.

## **8. CONDUCT AT DEVELOPMENT CONTROL COMMITTEE**

- 8.1 Any member of the Committee who expresses publicly a final view on a planning application prior to the Committee meeting at which a decision is to be taken must declare this at the commencement of the agenda item and should not vote on that particular item. The member may still address the Committee on the same basis as a local member.
- 8.2 Members of the Development Control Committee must be free to vote as they consider appropriate on planning matters. While it is accepted that members are free to discuss their opinions on planning applications at political Group meetings, decisions should not be made on how to vote on issues, prior to the Committee meeting.

## **9. COMMITTEE PROCEDURE**

- 9.1 Development Control Committee papers will normally be available 7 days prior to the meeting.
- 9.2 All applications submitted to the Development Control Committee for consideration will have a full written report from officers including a reasoned assessment of the proposal and a justified recommendation.
- 9.3 Any oral presentations raising new matters and updates by the officers to the Development Control Committee will be fully minuted. Where the applicant, objectors or consultees speak on the items, this will be recorded in the minutes.
- 9.4 If late representations are made or if material is produced at the Committee meeting which can materially affect the decision and cannot fully be taken into account by members, the application may be deferred to the next meeting of the Committee to enable the additional material to be verified by officers.
- 9.5 Where an application is refused in accordance with the officer recommendations, then the reasons for refusal will be as set out in the officer report.
- 9.6 Where the Committee is minded to refuse an application contrary to the officer recommendations, a final decision on the application may be deferred to the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that clear and convincing reasons for refusal of the application can be made, based on material planning considerations.

- 9.7 Applications which are refused contrary to officer recommendations must be supported by clear and convincing reasons for refusal, taking into account material planning considerations.
- 9.8 All reasons for refusal of applications determined contrary to officer recommendations will be minuted in full.

## **10. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS**

- 10.1 Any planning application submitted by a member or officer of the County Council in a personal capacity or in respect of which they have a pecuniary interest will be considered by the Development Control Committee and not dealt with by officers under delegated powers, and the member or officer will take no part in the processing of the application.
- 10.2 Such applications will be recorded by the Council's Monitoring Officer, who will confirm within the report to the Committee that the application has been processed normally.
- 10.3 Other planning applications will be considered by the Development Control Committee where they fall within the categories set out in the County Council's guidance for determining planning applications under delegated authority.
- 10.4 Councillors who act as agents for people pursuing a planning matter or who submit planning proposals in their own right must play no part whatsoever in the decision making process for any such application.

## **11. COUNTY COUNCIL DEVELOPMENTS**

- 11.1 Applications for the County Council's own development will be treated in the same way as those of a private developer.

## **12. AVAILABILITY OF INFORMATION RELATING TO PLANNING APPLICATIONS**

- ~~12.1 Notification of planning applications will generally be carried out on the County Council's behalf by the relevant District Council in accordance with the County Council's current Development Control scheme.~~
- 12.12 All letters notifying local residents of planning applications will be accompanied by information on how to make their views known to the Planning Authority. The applicant, consultees and objectors will be informed of arrangements by which they may attend the Development Control Committee and speak on the applications prior to a decision being taken.
- 12.23 Local members will be informed of all planning applications that fall to the County Council to be determined, as soon as practicable following receipt of the applications.

12.34 Copies of planning applications, subsequent amendments, relevant correspondence from consultees, planning decisions, conditions or reasons for refusal and S106 Agreements will be made available for public inspection at Shire Hall during office hours, subject to 24 hours notice. Letters of objection and support will also be available for public inspection during office hours, subject to 24 hours notice.

~~12.5~~12.4 Copies of planning applications will also be available for inspection at Castle Court reception during office hours and are also available on the Council's website. ~~the offices of the relevant district council(s).~~

### **13 REVIEW OF DECISIONS**

- 13.1 Periodic site visits will be conducted from time to time to enable members of the Committee to assess the quality of implemented planning permissions.
- 13.2 Attendance at review visits will be restricted to members of the Development Control Committee and the local member(s) accompanied by Officers.

APPENDIX 'A'