

**EXTRACT FROM THE COUNCIL'S CONSTITUTION**

**12. Gedling Borough Council Code of Practice for Councillors in Dealing with Planning Applications**

**12.1 Introduction**

12.1.1 This Code is based upon the Guidance Note issued by the Local Government Association on Probity in Planning for Councillors and Officers. It has been prepared by the Planning Committee and has been adopted by the Council. Failure on the part of any Councillor to comply with this Code may comprise conduct which could reasonably be regarded as bringing his office or the Council into disrepute and may accordingly be a breach of Paragraph 7 of the Members' Code of Conduct.

**12.2 The General Role of Councillors and Officers**

12.2.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors. A successful relationship between Councillors and Officers will be based upon mutual trust, understanding and respect of each other's positions and roles.

12.2.2 Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the RTPI. Similarly Officers who are Solicitors are subject to the Solicitors Regulation Authority (SRA) Code of Conduct, breaches of which may be subject to disciplinary action by the SRA. Councillors must not ask officers to act in a way which will put them in breach of their professional rules.

**12.3 Conflicts of Interest and Predetermination**

12.3.1 A member of the Planning Committee who is also a member of another body, whether within the Council such as the Cabinet or a committee, or outside the Council such as a parish council or charitable body, should comply with the requirements of the Council's Members' Code of Conduct with regard to the declaration of interests and the participation or non-participation in the consideration of any planning application submitted by that body.

- 12.3.2 A Member of the Planning Committee who has expressed a clear intention to vote in a particular way or has otherwise predetermined their position on an application before its consideration by the Committee must not take part in the decision as a Member of the Planning Committee.
- 12.3.3 If any member of the Planning Committee has expressed a view on a planning application to be considered by the Planning Committee on any occasion and in any forum in advance of consideration of the matter by the Planning Committee, but is willing to and intends to listen to all the considerations presented to the committee before deciding on how to vote, then they should not be regarded as having fettered their discretion and they may participate and on that application.

## **12.4 Development proposals submitted by councillors and officers and Council development**

- 12.4.1 Councillors and Officers have a right as members of the public to submit planning applications. Such applications must be handled in the following way so as to avoid accusations of favouritism:
- Officers and Councillors must not act as agents for those pursuing planning matters within the Council even if they are not involved in the decision making.
  - Where a Councillor is the applicant for planning permission or is a relative or close associate of the applicant, that Member should play no part in the decision-making process for those proposals. A Councillor who is the applicant will have a disclosable pecuniary interest in their own application and would commit a criminal offence if they participated in its consideration.
  - Where an Officer is the applicant for planning permission or is a relative or close associate of the applicant, that Officer should play no part in processing, advising on or determining the application.
  - The Monitoring Officer should be informed of any application submitted by a Councillor or Officer.
  - Councillor/Officer applicants must not lobby or bring pressure to bear on other Officers or Councillors in connection with their application.
  - Any planning application submitted by a Councillor or Officer (or their partner or spouse or immediate family member) should be dealt with by the Planning Committee itself and not dealt with by officers under delegated powers.

- The right of an applicant to address the Planning Committee before consideration of the application by the Planning Committee should not apply where the applicant is a member of the Council. In that case, the Councillor may write to the Committee with such representations as they wish to make.

12.4.2 The decision making process for proposals relating to Council owned land or Council development can be open to criticism on the basis that the Council may find it difficult to separate its roles as developer and planning authority. It is therefore important that the application is treated with the same transparency and impartiality as those of private developers. Such applications must therefore be handled in the following way:

- Any Officer involved in the initiation of the proposals must not be involved in the processing and determination of the application.
- Any Councillor/Officer involved in the initiation of the proposals must not lobby or bring pressure to bear on other officers or Councillors in connection with the application.
- Any planning application submitted by or on behalf of the Council should be dealt with by the Planning Committee itself and not dealt with by officers under delegated powers.
- Any Councillor involved in the decision to initiate the proposals can only participate at Planning Committee if they are prepared to make their decision in the light of the information and evidence presented there.

## **12.5 Lobbying of and by Councillor**

12.5.1 Lobbying is a normal part of the planning process; however it can lead to the impartiality and integrity of Councillors being called into question unless care is exercised. When being lobbied by any party on a planning application, members of the Planning Committee should avoid expressing any opinion which might be taken as indicating that they have already made up their mind on the issue. If Councillors do express an opinion, they should make it clear that they will only be in a position to make a final decision after having heard all the relevant arguments and taking into account all relevant material and planning consideration at committee. In order to avoid any allegation of predetermination or bias, Councillors could restrict themselves to giving procedural advice, including advice on how and to whom those lobbying can communicate.

- 12.5.2 Councillors can raise issues which have been raised by their constituents with officers.
- 12.5.3 The consideration of planning applications by the Planning Committee should not be subject to whipping arrangements on behalf of the political groups and Councillors must not decide in group meetings before the Committee how they should vote on the matter in Committee. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- 12.5.4 A member of the Planning Committee should avoid organising support for or against a planning application and should avoid lobbying other Councillors on such applications.
- 12.5.5 Councillors should not put improper pressure on officers for a particular recommendation or decision, and should not do anything which compromises or is likely to compromise officers' impartiality or professional integrity. Councillors must recognise that Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct and may be subject to disciplinary action if they are in breach of the Code. Similarly Solicitors are subject to the Solicitors Regulation Authority Code of Conduct.
- 12.5.6 If any Councillor, whether or not a member of the Planning Committee, acts as a speaker on behalf of a lobby group at Committee, they must withdraw once they have spoken in order to avoid any suggestion that members of the Committee may be influenced by their continued presence.

## **12.6. Decisions Contrary to Officer Recommendations**

- 12.6.1 The Planning Committee must only make planning decisions in accordance with the development plan (which includes the Aligned Core Strategy and adopted Local Plan and supplementary planning documents), unless material considerations indicate otherwise, and Article 11 of the Articles of the Constitution.
- 12.6.2 Planning Committee can make a decision which is contrary to the officer recommendation. This will usually be as a result in the difference in the assessment of how a policy has been complied with or a different weight given to material considerations.
- 12.4.2 When making a decision which differs from the Officer recommendation, Planning Committee will:

- Record the reasons for the decision as part of the mover's motion.
- Adjourn for officers to draft suitable wording to reflect the reasons proposed.
- In any case in which Councillors wish to add to or amend conditions proposed by Officers, adjourn the meeting to give Officers a reasonable opportunity to draft suitable conditions reflecting Councillors wishes
- Give officers the opportunity to explain the implications of the decision, including an assessment of a likely appeal outcome and chance of a successful award of costs against the Council, should one be made.
- Formally agree the detailed reasons for the decision when the meeting re-convenes.
- Consider adjourning the matter to another meeting where there are concerns about the validity of the reasons proposed.

- 12.4.3 If the Planning Committee makes a decision contrary to the officers' recommendation, the Minutes should contain a detailed note of the Committee's reasons for the decision, which should be placed on the application file. Councillors must be prepared to explain in full their reasons for not agreeing with the officer recommendation. The reasons for the decision should be clear and convincing.
- 12.4.4 Where Councillors refuse permission contrary to Officer advice, after the Committee meeting, Officers and Councillors will meet to discuss how to pursue the matter. Where it appears that the grounds for refusal could be overcome by further negotiation with the applicant, Officers will pursue this with a view to encouraging a revised application. However, this can involve cost for the applicant and can be time consuming. Therefore, notwithstanding any attempts at negotiation by Officers, the applicant may decide to appeal the decision.
- 12.4.5 Where an appeal is received, Officers and Councillors will meet to discuss the nature of the appeal, the issues raised and how it will be handled.
- 12.4.6 For appeals determined by Written Representations, after discussion with the relevant Councillors, Officers will produce the draft written statement, which will reflect and justify the reasons for refusal. This will then be sent to the nominated Member(s) to agree or add to the statement. Officers will provide technical and professional guidance on whether it is appropriate to include or exclude certain information. The statement will then be submitted and the appeal determined.
- 12.4.7 For appeals determined at Informal Hearings, the statement will be produced as above. Pre-hearing meetings will then be held between Planning and Legal Officers and the nominated Member(s) to discuss what the planning issues are, and how

the nominated Member(s) will present their reasons for the decision and defend the appeal at the hearing.

- 12.4.8 An informal hearing is a round table debate in the form of a discussion led by the Inspector. Cross-examination is not usually permitted unless the Inspector considers that it is required to ensure a thorough examination of the main issues. In such cases the Inspector will consider whether the informal hearing should be closed and a full public inquiry be held instead.
- 12.4.9 Solicitors or other professional advisers (such as highways or landscape officers) do not usually attend informal hearings on behalf of the Council as there is no role for them at the round table discussion. However, it is recognised that in exceptional circumstances there may be grounds for an advocate to attend the informal hearing. In such cases the Council Solicitor and Monitoring Officer in consultation with the Chair of the Planning Committee will determine what attendance, if any, is appropriate.
- 12.4.10 Planning Officers will attend the informal hearing to act in a facilitator role, clarifying any questions regarding process or factual matters, for example regarding points of planning policy, site history or technical issues, and to provide professional advice for Councillors.
- 12.4.11 At the hearing itself, if an application for award of costs is made by the appellant, Planning Officers will support the nominated Member(s) in responding to these, and may respond on issues of procedure and decision-making. In this situation Officers will work with Councillors to emphasise the importance of local decision making and to explain the process which was applied when applying weight to the material considerations of the case.
- 12.4.12 For appeals determined at Public Inquiries, the same process as above will apply. However, as these involve more significant issues, and may require professional legal representation, there are likely to be more meetings before statements are exchanged and before the inquiry itself. It will be important therefore that both Officers and the nominated Councillors attend all of these.
- 12.4.13 Officers and professional legal representatives will act as advocates (or expert witnesses) and will also work with Councillors to prepare them to be cross examined during the Inquiry. This will include investigating potential lines of inquiry.

## **12.5 Site Visits**

- 12.7.1 Site visits will only be arranged for the Planning Committee with the agreement of the Chair of the Committee where the benefit is clear and substantial. A site visit is only likely to be necessary if:

12.7.1.1 the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by Officers; or

12.5.1.2 there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing

12.5.1.3 the proposed development is particularly contentious or significant in relation to the locality.

12.5.2 Where a site visit is arranged for the Planning Committee:

- the purpose, format and conduct should be clear at the outset and adhered to by all throughout the visit
- a record of the reasons why a site visit is called shall be kept
- the Committee will be accompanied by Officers
- the visit must not be used as a lobbying opportunity by the applicant, objectors or supporters. This will be made clear to parties present
- the visit itself will consist of an inspection of the site by the Committee to gain a better understanding of the issues and will be run on the strict lines of a planning inspector's site visit.
- the merits or otherwise of the application will not be discussed.

12.5.3 Where a site visit is not arranged for the Planning Committee a member of the Committee may be tempted to visit the application site alone. Members do not have the right to enter private property and can only view the site from public vantage points. Even if invited by the owner to do so, Members of the Planning Committee should not enter the site on their own, as this could lead to a perception of bias or pre-determination.

## **12.6 Member Training**

12.8.1 All Councillors of the Council will receive training with regard to the planning system. Only Councillors who are willing to accept within a reasonable time such training will be permitted to serve on the Planning Committee.