

## **8. Member Procedures**

### **(e) Guidance for Planning**

#### **Introduction: The Need for Guidance**

##### The Role of Local Councillors in Planning Objections - Planning Voice - Objections

“Perhaps the most challenging aspect of a councillor’s role in the planning objection process is balancing the diverse interests of different stakeholders. On one hand, they must consider the concerns of residents who may be affected by a proposed development. On the other, they need to acknowledge the broader benefits that such developments can bring to the community, such as improved infrastructure or economic growth. This balancing act requires councillors to have a deep understanding of both the local community’s needs and the strategic objectives of urban planning.”

This Guidance has been written to inform all parties of Teignbridge District Council’s standards in its operation of the town and country planning system within the district.

The Guidance applies to all Teignbridge District Councillors and staff involved in operating the planning system within Teignbridge. It is not restricted to the Council’s planning officers and members of the Planning Committee but applies also to meetings of the Full Council when taking planning decisions.

The successful operation of the planning system in Teignbridge District depends upon the Council always acting in a way which is clearly seen to be fair and impartial. This relies upon a shared understanding of the respective roles of Councillors and officers, and upon trust between them. The following quotation from *Probity in Planning* (Local Government Association 2019, page 13) illustrates the point:

“It is very difficult to convey every nuance of these situations and get the balance right between the duty to be an active local representative, and the need to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor. Again, where there are concerns, advice should immediately be sought from the local authority’s Monitoring Officer.”

The Local Government Association has advised local planning authorities, such as Teignbridge District Council, to set out clearly their practices and procedures on handling planning matters in a local Code of Conduct.

Councillors and staff should read this Code thoroughly and to put it into practice consistently. Failure to do so without good reason could be taken into account in

investigating allegations of breach of the Code of Conduct adopted following the requirements of the Local Government Act 2000 or maladministration.

**This Guidance does not form part of the Code of Conduct but is complementary to it.**

It is intended to review the Guidance regularly to keep it up-to-date and relevant. If there are any points which are unclear or which need review, please contact the Council's Monitoring Officer or the Deputy Monitoring Officer as soon as possible. They will be pleased to help you.

## **1. GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- 1.1 Councillors and officers have different, but complementary, roles. Both serve the public, but Councillors are responsible to the electorate, while officers are responsible to the Council as a whole. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other's position. This relationship, and the trust which underpins it, must never be abused or compromised.
- 1.2 Legislation emphasises the overriding requirement that the public are entitled to expect the highest standards of conduct and probity by all persons holding public office. There are a number of statutory provisions and codes setting standards which must be followed if the public perception of the integrity of public service, particularly town and country planning, is to be maintained and improved.
- 1.3 While this Guidance deals primarily with planning applications, its principles apply with equal vigour to consideration of Local Plans, Development Briefs, enforcement cases and all other planning matters. An overriding principle is that when local authorities are dealing with planning matters, they should only take into account material planning considerations.
- 1.4 Section 54A of the Town and Country Planning Act 1990 established a plan-led system whereby all planning applications are determined by primary reference to the Development Plan. This principle has carried through into Section 38(6) of The Planning and Compulsory Purchase Act 2004 which is used today. Thus, if the Development Plan is material to the application, then the statutory requirement is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 1.5 Officers involved in the processing and determination of planning matters must also act in accordance with the Council's Procedure Rules, The Officer Code of Conduct and (for officers who are Chartered Town Planners) with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct.
- 1.6 This Guidance supplements the provisions referred to above and provides further specific advice and guidance for Councillors and officers involved in

planning matters. A key principle is that Councillors should represent their constituents as a body and vote in the interests of the District as a whole. Councillors should take account of all views expressed, they should not be biased towards any person, company, group or locality.

- 1.7 A further key principle is that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is based upon valid planning reasons which can be substantiated.
- 1.8 Councillors and officers should not accept gifts, nor should they accept hospitality. However, if a degree of hospitality is truly unavoidable, (e.g. receipt of tea, coffee or other light refreshments) gifts with a value of over £50 have to be declared to the Monitoring Officer under the Code of Conduct.
- 1.9 Officers must always act impartially and seek permission from the appropriate senior officer for any private work or interest which they wish to take up.
- 1.10 Training events will be provided for Councillors to assist them to carry out their planning roles.
- 1.11 Members of the Planning Committee and substitute members are required to be present on every occasion a planning application is discussed to vote on the application, other than attendance at a site inspection.

## **2. DECLARATION AND REGISTRATION OF INTERESTS**

### **Councillors**

- 2.1 The rules concerning the declaration of interests is contained in the Code of Conduct. Councillors will need to make themselves familiar with the Code and understand the distinction between personal interests which must be declared but which do not lead to the councillor having to withdraw and prejudicial interests which require withdrawal.

### **Officers**

- 2.2 Where Council Officers have a pecuniary, or non-pecuniary interest, in a planning application or other planning matter, they should declare their interest in writing to the Monitoring Officer and Head of Development Management immediately. This written record will then be retained on the relevant file.
- 2.3 An officer declaring such an interest should subsequently play no part in processing an application.
- 2.4 In determining whether an interest should be declared, officers should use the same tests as Councillors. Examples of interest which should be declared are relatives or friends submitting applications; belonging to a church, club or other social group who has submitted an application; or living in proximity to a site which is at issue.

**3. DEVELOPMENT APPLICATIONS SUBMITTED BY COUNCILLORS, OFFICERS AND THE COUNCIL**

- 3.1 Serving Councillors and officers must never act as agents for individuals (including a company, group or body) pursuing a planning matter. This includes not only pursuing development proposals but also works under related legislation such as works to protected trees. If Councillors or officers submit their own proposals to the Council, they should take no part in processing the application, nor take part in the decision making. The Council's Monitoring Officer must be informed of all such proposals as soon as they are submitted.
- 3.2 Proposals submitted by Councillors and officers must be reported to the Planning Committee as written agenda items and not dealt with by officers under delegated powers.
- 3.3 Proposals for the Council's own development (or development involving the Council and another party) must be treated strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.

**4. LOBBYING OF AND BY COUNCILLORS, AND ATTENDANCE AT PUBLIC MEETINGS BY OFFICERS AND COUNCILLORS**

- 4.1 When Councillors undertake their constituency roles, it is inevitable that they will be subject to lobbying by interested parties and the public on planning matters and specific planning applications. When Councillors are lobbied, they need to exercise great care to maintain the Council's, and their own integrity, and to uphold the public perception of the town and country planning process.
- 4.2 Councillors who find themselves being lobbied (either in person, over the telephone, or by post, fax or e-mail) must take active steps to explain that, whilst they can listen to what is said, it would prejudice their impartiality if they expressed a conclusive point of view or any fixed intention to vote one way or another.
- 4.3 Councillors involved in the determination of planning matters should listen to all points of view about planning proposals and are advised to refer persons who require planning or procedural advice to planning officers. Councillors must not indicate conclusive support or opposition to a proposal or declare their voting intention before the meeting at which a decision is to be taken. Nor should Councillors advise other parties that permission will be granted or refused for a particular development or that land will, or will not, be allocated for development in a Local Plan. To do so without all relevant information and views, would be unfair, prejudicial and may amount to maladministration.

- 4.4 Taking account of the need to make decisions impartially, Councillors must weigh up all the material considerations reported at each Committee meeting. They should not be biased towards any person, company, group or locality.
- 4.5 If planning applications are referred by a Planning Committee to Full Council (or meetings of different organisations attended by Councillors), each consideration will require the Councillor to weigh up, afresh, all the reported material factors before reaching a decision at that particular meeting.
- 4.6 By law, the District Council has to seek comments from the Town/Parish Councils on planning applications and other planning matters so that their comments can be considered when the District Council makes planning decisions. Some District Councillors are also Town/Parish Councillors and they take part in Town/Parish Council debates about planning applications and other planning matters. Merely taking part in Town/Parish Council debates on planning matters does not automatically debar District Councillors from decision-taking at the District Council. However, with few exceptions Town/Parish Councils do not have professional planning advice or complete information on the application and other planning matters when they make their recommendations to the District Council. Therefore, District Councillors who are also Town/Parish Councillors should be careful not to state that they have reached a conclusive decision when they consider planning issues at their Town/Parish Council meeting. Nor should they declare to the Town/Parish Council what their future voting intention will be when the matter is considered at the District Council.
- 4.7 While Councillors involved in making decisions on planning applications will begin to form a view as more information and options become available, a decision can only be taken at the Planning Committee, and Council when all available information is to hand and has been considered.
- 4.8 Any relevant papers (including letters, photographs, drawings, petitions etc) passed only to Councillors by applicants or objectors prior to a committee meeting should be notified to officers and reported to the Committee.
- 4.9 Individual Councillors should reach their own conclusions on an application or other planning matter rather than follow the lead of another councillor. In this regard, any political group meetings prior to Committee meetings should not be used to decide how Councillors should vote. Decisions can only be taken after full consideration of the officers' report and information and discussion at the Committee.
- 4.10 A Planning Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the 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 they have carefully

weighed the evidence and arguments presented at Committee. A Councillor should avoid organising support for or against a planning application if they intend to participate in its determination at Committee. However, it should be possible for a Councillor to say that they will make the views of the public known at the Committee whilst themselves waiting until the Committee and hearing all the evidence before making a final decision upon how to vote.

- 4.11 Councillors must not lobby other Councillors on proposals in a way that could lead to their failing to make an impartial judgement on the planning merits of these cases when making decisions at Council Committees. Nor must Councillors put undue pressure on officers for a particular recommendation nor do anything which compromises or is likely to compromise the impartiality of officers.
- 4.12 Officers who are wholly or partly involved in the processing or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications unless their attendance has been agreed by their Head of Service. To do so could lead to allegations of prejudice or bias to a particular point of view. If put in such a position, officers should avoid prejudicing the Committee's decision.
- 4.13 When attending public meetings, Councillors must take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.
- 4.14 If Councillors consider that they have been exposed to undue or excessive lobbying or approaches, these must be reported to the Monitoring Officer.

## **5. DISCUSSIONS RELATING TO PLANNING APPLICATIONS**

- 5.1 It is generally recognised that discussions between potential applicants or applicants and the Council prior to the submission of an application can be of considerable benefit to both parties. Discussions can take place for a variety of reasons, for example to establish whether an application can be improved in design, or to overcome planning objections or to meet relevant neighbour concerns. However, it would be easy for such discussions to be seen by objectors as part of the lobbying process by potential applicants.
- 5.2 In order to allay such perceptions, application discussions should take place within the clear guidelines given below.
- 5.3 For Major or Strategic applications, the Head of Development Management, with agreement by the Chair of the Planning Committee, can hold a Pre-Committee Briefing is held with the Planning Committee to allow for Members to engage with the applicant and identify issues early on.
- 5.4 Such discussions will take place in person at District Council offices only. Pre-Committee Briefings must be led by the Head of Development Management

or a relevant Planning Officer as agreed by the Head of Development Management.

- 5.5. Members of the Planning Committee must not take part in any Pre-Committee Briefings without the presence of the Head of Development Management or a relevant Planning Officer as agreed by the Head of Development Management.
- 5.6. Councillors involved in any discussions must maintain an independent position and avoid committing themselves to either supporting or opposing the application at Committee. If Councillors feel that they are being put under pressure to support or oppose an application they must suggest to the applicant/objector that they put their views to the planning officer.
- 5.7. Planning officers must always make clear at the outset of discussions that they cannot bind the Council to make a particular decision, and that any views expressed are their provisional professional opinions only.
- 5.8. Advice given by planning officers will aim to be consistent and based upon the Development Plan (Local Plan and Neighbourhood Plans) and other material considerations including the National Planning Policy Framework (NPPF). Senior officers will make every effort to ensure that there are no significant differences of interpretation of planning policies between planning officers.
- 5.9. Planning officers will ensure that their advice, and reports, in the sense that they should not favour any particular applicant or objector are impartial. This is because a consequent report must not be seen as advocacy for a particular point of view.
- 5.10. The involvement of Councillors in such discussions such as a Pre-Committee Briefing and important telephone conversations with applicants will be noted by officers as a written file record and be made available on the Council's website/planning portal. A follow-up letter must be sent, particularly when material has been left with the Council by the applicant or agent for comment. All information will be available to the public on the Council's website.
- 5.11. Councillors who also serve on Town & Parish Councils must make clear their separate roles in each Council regarding Teignbridge District planning policies. The Councillor and other interested parties must be clear at all times when the Councillors are acting as a Town or Parish Councillor, and when they are acting in their role as a District Councillor. Councillors should refer to Section 2.1 of this guide.

## **6. REPORTS BY OFFICERS TO COMMITTEES**

- 6.1. Many planning applications are delegated to be determined by the Head of Development Management.
- 6.2. Where decisions on applications fall to be made by the Planning Committee or Council, they will be the subject of full written reports, except where the

applications are to be determined by the Committee simply because the application is from a District Council Member, a member of staff or staff relatives, or the District Council.

- 6.3 Reports on planning matters will be accurate and will contain a description of the development proposed in the application (including dimensions and areas where necessary). They will refer to the provisions of the Development Plan and all other planning considerations including a full description of the site, any relevant planning history, and the substance of objections and other views received.
- 6.4 All reports requiring a decision will have a written recommendation. Oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur. All reports will contain a technical appraisal which clearly justifies the stated recommendation. All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous.
- 6.5 Any additional information which is material to a planning decision, and which is received after publication of agendas, will be reported to the meeting.

## **7. THE DECISION MAKING PROCESS AND DECISIONS CONTRARY TO OFFICER RECOMMENDATIONS AND/OR THE DEVELOPMENT PLAN**

- 7.1 The law requires that, where the Development Plan is relevant, planning decisions should be made in accordance with it unless other material considerations indicate otherwise (Section 38(6) of Planning and Compulsory Purchase Act 2004).
- 7.2 The relevant Development Plan, and other material considerations, will be identified in officers' reports. Material considerations will vary from case to case. In arriving at a decision, it is a matter of judgement for the Planning Committee (or Council) as to the weight to be attached to the various material considerations.
- 7.3 In discussing, and determining a planning application or other planning matter, Councillors should confine themselves to the planning merits of the case. The reasons for making a final decision should be clear, convincing and supported by material considerations, planning policy and the planning merits.
- 7.4 Members should consider the advice of the officers but ultimately, they are free to vote as they choose. If Councillors wish to determine an application contrary to officer advice, or to impose additional conditions to a permission, an officer should explain the implications of such action. The Councillors' grounds including planning policies for any contrary determination, or for wishing to impose additional conditions, must be clearly stated at the time the propositions are made and votes taken at the meeting. The personal circumstances of an applicant will rarely provide such grounds.

- 7.5 If a resolution is passed which is contrary to a recommendation of the Head of Development Management (whether for approval or refusal) a Minute of the Committee's reasons will be made, and a copy placed on the application file.
- 7.6 If the report of the Head of Development Management recommends approval of a departure from the Development Plan, the full justification for this recommended departure should be included in the report.
- 7.7 Senior planning officers (and legal officers as necessary) should attend meetings of the Planning Committee to ensure that procedures are properly followed, and planning issues properly addressed.
- 7.8 It is important that Councillors who determine planning applications do so only after having considered all the material planning considerations. They must take all relevant matters into account, and they must disregard irrelevant considerations. It is important that they are seen to do this. For this reason, it is important that Councillors only participate in the debate and vote on a planning application if they have been present throughout the whole of the officers' presentation and the subsequent committee debate. Councillors who arrive at a meeting part-way through consideration of an application or who are absent from the meeting for any part of that consideration may not be aware of all the relevant considerations. In any event, their participation can be seen to be unfair – it could amount to maladministration as well as giving rise to a legal challenge that the decision-making process was flawed. Councillors have to be present at each formal committee meeting at which the application is considered. Site inspections are excluded from this.

## **8. SITE VISITS BY COUNCILLORS**

### **The need for Committee Site Visit**

- 8.1 Site Visits are a fact-finding exercise for further information to address the planning reason(s) for the consideration of the application. Site visits by Planning Committees can be helpful in reaching a decision on issues where site circumstances are fundamental to the decision. However, Committee site visits can cause delay and additional costs for both the developer and the Council and should only be used by exception..
- 8.2 Site inspections are held only if:
  - A. The Head of Development Management believes a site inspection would be beneficial in advance of the consideration of the application
  - B. Requested by the Committee during the Committee decision making process
- 8.3 Attendance at site inspections continue to be for all Committee members and not by an appointed sub-Committee or delegation of Committee members.

8.4 Democratic Services will prepare a written note of the key planning issues and information obtained from the site visit, to be reported to the subsequent meeting of the Planning Committee. Councillors in attendance at the site inspection are able report verbally at the next meeting of the Committee.

### **Attendance at site visits**

8.5 Those authorised to attend a site visit inspection and speak:

- Planning Committee Members (and substitutes)
- Planning Officers
- Democratic Services Officers
- Other Ward Members (if applicable).

Those invited as observers only:

- One Parish/Town Council representative
- Members of adjacent Wards

Others:

- Consultees will be invited to attend only if specifically requested by Councillors or required by Planning Officer.

8.6 Applicants, agents, supporters or objectors will not be invited to attend site visits.

### **Procedure on Site**

8.7 Councillors and Officers attending should refer to the Planning Site Inspections Procedural Guidance for the full procedure on site. A detailed explanation of the proposals, and a summary of the officers' report and recommendations, will be made by the planning officer. Councillors will then be given the opportunity to ask questions and to view the site and surroundings from all relevant vantage points.

8.8 Councillors should keep together during site visits and not allow themselves to be addressed separately by applicants or objectors.

8.9 No decisions are made at site visits.

### **Informal Site Visits**

8.10 There are advantages in Councillors making their own individual site visits to gain knowledge of the development proposal, the application site and its surroundings. In doing so, Councillors should observe sites from public vantage points (highways, rights of way or public open space) and should not enter onto private land.

8.11 Whilst on individual site visits, Councillors must maintain impartially.

8.12 Where application sites are not visible without entering onto private land – for example, rear extensions or country houses in larger plots – Officers will make an additional effort to provide appropriate visual information at Committee.

## **9. REVIEW OF PLANNING DECISIONS**

9.1 Arrangements will be made for Councillors to visit a sample of implemented planning permissions annually, so that a regular review of the quality of planning decisions can be undertaken. This will include examples from a broad range of categories such as major and minor development, permitted departures, upheld appeals etc.

9.2 The outcome of this review will be reported to the Planning Committee and to the Overview and Scrutiny Committee and may lead to identification of possible amendments to existing policies or practice.

## **10. COMPLAINTS AND RECORD KEEPING**

10.1 The Council has a complaints procedure, which can be used by any party to the planning process (applicants, objectors or others) to complain about the way in which a matter has been handled (the complaints procedure is not intended to reopen the planning decision).

10.2 In order to ensure that planning procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interest by Councillors.

10.3 The same principles of good record keeping will be observed in relation to all enforcement and Development Plan matters. Monitoring of record keeping will be undertaken regularly by the senior planning staff.

10.4 Where a planning application is dealt with under the delegated procedure a record of the planning considerations taken into account in determining the application shall be kept, alongside the determined drawings/documents and the decision notice, in the form of an officer report.

## **11. CONTRAVENTION OF THIS GUIDANCE**

11.1 Where any breach of this Code constitutes misconduct by a Councillor, then it is to be dealt with in accordance with the Council's Code of Conduct procedures ([Section 10 of the Constitution](#)).

11.2 Where any breach of this Code constitutes misconduct by an Officer, then it is to be dealt with in accordance with the Council's disciplinary procedure.

Section 8(e) – Codes and Protocols (Guidance for Planning)