

# **West Suffolk Council**

## **West Suffolk Planning Code of Practice**

### **Purpose**

This Code has been prepared to demonstrate the Council's commitment to transparency and openness in the determination of planning applications, to ensure that in the planning process decisions are made in a way that is fair, impartial and well founded, with justifiable reasons.

### **Application**

This Code of Good Practice applies to members at all times when involving themselves in the planning process (including, where applicable, decision making meetings of the Council whenever they exercise the functions of the Planning Authority in determining applications and other issues, or when they are making representations as local members). It applies as equally to planning enforcement matters 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 from the Monitoring Officer as soon as possible.

### **Relationship to members' Code of Conduct**

The members' Code of Conduct takes precedence over this Planning Code of Practice.

Councillors should always seek to be open about interests they hold. If councillors do have an interest in an application, they should make this clear at the relevant committee.

### **Development proposals and members' interests**

Where members have a pecuniary interest, by law, they should not take part in any committee discussions or decision making processes in relation to the application. A pecuniary interest would include situations where it is their own, or their spouse's planning application, a business they own is applying for planning permission, or an organisation they work for is applying for planning permission (reference should be made to the member Code of Conduct and any declared pecuniary interests that the member has). Members may find it helpful to appoint a third party or agent to act on their behalf in any of their own applications to avoid any impression that they are seeking to place undue pressure on decision makers. Members should ensure they notify the Monitoring Officer and the Planning Department as soon as they know when a pecuniary interest they hold is likely to apply for planning permission.

There are situations where members may not have a pecuniary interest in the application itself, but they do have an interest that otherwise is so significant that a reasoned member of the public may believe that they are likely to be biased for or against the application. In these situations, the councillor should consider whether they can be objective when considering the application, and if

they consider that is not possible, ensure that relevant officers and members are aware of their situation and not to involve the member unnecessarily within it.

These situations could include occasions where a member is part of an outside organisation, whether they have sought that nomination themselves or are appointed by the Council (including appointments to the Council's own companies). Participation in decision-making in such situations could lead to concerns regarding predetermination or bias (see below).

In such situations, members may still submit representations and attend Committee to support or oppose the application but they should ensure that whenever they do so, they make clear it is in a personal capacity and not refer to themselves as councillors.

If any member has concerns about their own personal situation and extent to which they should be involved in an application, then they must consult with the Monitoring Officer, preferably before any committee meeting to consider the application.

Where a member has decided not to engage with a planning application due to their personal situation, they may appoint another local member to act as local Member in relation to the application. The member should notify the relevant Case Officers, and any other parties who are contacting them about the application who is acting as local member as soon as possible.

## **Predetermination**

Members taking part in decision making on planning applications must have an open mind. Members are entitled to have an opinion (be predisposed) or change their minds, but if a fair minded and informed member of the public may think there is a real possibility you are biased, or have a closed mind on the application because of anything you have said or done you should not take part in the decision. If you do take part, you could put the Council's decision at risk. For this part, a fair minded and informed person is someone who is independent of the situation and has opportunity to consider the facts of the situation.

Predisposition is not the same as predetermination. It occurs where a councillor is inclined to favour a certain view but is still open to considering the facts of the situation. For example, a councillor may be more inclined (predisposed) to favour applications that demonstrate compliance with the council's own planning policies but on occasions they may support applications that do not fully comply. This is acceptable, and councillors have no need to declare an interest where they are predisposed.

Members are not predetermined simply by virtue of having considered the application before, whether at a previous Development Control Committee, a parish or town council meeting or by having made a decision on very similar applications. However, members do have a duty to consider each application at hand independently and take into account all material factors at the time they make their decision, demonstrating an open mind at all stages. They should be aware of comments they have made in public meetings, or have been reported as saying, and what impression this may give to both the public and applicants

about their state of mind. If they are called on to give a formal opinion on an application prior to the development control committee it is helpful for members to make clear their position on the committee and the need to reserve or caveat their judgement appropriately, or that they would like to keep an open mind and not comment on the application at that stage.

Where the Council (or another council the member is elected to) is the landowner or the applicant, members should be mindful of the position they have taken on previous decisions but again are not necessarily predetermined. It is well established in law that the Council can determine its own application, but again members should demonstrate that they have an open mind on the application and are considering the application based on material planning reasons only.

Where you consider you may be predetermined, make clear that is the case and remove yourself to the public area of the committee meeting when the application is considered. You do have the right to speak as Ward Member, but again bear in mind that as a Ward Member you have a duty to represent your ward and you may not be able to do so objectively if you are predetermined. If you consider there is a perception you could be predetermined, but you do not consider yourself to be, you are also expected to declare this to the Committee in the declarations of interest part of the meeting and make clear why this is not the case.

### **Where the Council is both the local planning authority and developer**

Any applications made by or on behalf of the Council are considered by the Development Control Committee to ensure there is appropriate public transparency in the way that the Council determines its own applications.

However, the Council is also under a duty to ensure there is functional separation between those bringing forward a development, and those who will determine any proposal.

It is therefore advisable that any member who has functional responsibility for the development proposal, such as the Cabinet member responsible for the relevant application, or any other members who have actively promoted the development in other forums, should declare an interest and withdraw from the Development Control Committee when a decision is made.

For clarity, members that have simply expressed support or opposition for a business case for a Council development at meetings such as Cabinet or Council, whether having spoken or voted in favour of the development at those meetings, are allowed to participate fully in the Development Control Committee considering the planning merits of the proposal.

### **Acting as a member of the Development Control Committee where you are also the Ward Member**

As above, members of the Development Control Committee must seek to retain an open mind up to the point where a decision is made.

This can be challenging when you are the local Ward Member. Ahead of the meeting, it is important that you make clear your role on the Committee to local residents and the need to avoid predetermining yourself. You can still inform individuals and groups as to how they can put forward their own views.

At the Committee, you are entitled to speak as local member in the specified slot. This is intended to allow you to articulate the views from across your communities and your local insight, whether that represents your own views or not. As long as you remain open minded on the application, you may take part in the main Committee debating and voting on the application.

An adjacent Ward Member may act on behalf of and with the approval of the Ward Member(s). If acting in this capacity as an adjacent Ward Member, whilst also being a member of the Committee, members must equally demonstrate an open mind during the debate.

## **Lobbying**

Lobbying is a normal part of the planning process and may be by both supporters and/or objectors of the application.

Councillors need to make clear to lobbyists that whilst they can hear their arguments, you cannot express a firm view on the application as otherwise it may prejudice your ability to take part in the Development Control Committee.

Local members can play an important role in helping lobbyists understand those factors the Council can and cannot take into account, when determining planning applications, and how they may be able to more effectively express their views. This does not mean that the local member supports or opposes the views of lobbyists.

The Code of Conduct requires councillors to make declarations where they are in receipt of gifts or hospitality where its value is over £25 (or equivalent value). However, in general, councillors should try to avoid receiving gifts and hospitality, especially from applicants or objectors to applications, due to the impression that this can give.

Councillors sitting on the Development Control Committee must avoid leading or generally taking part in lobbying groups. Further, Development Control is a quasi-judicial regulatory process; it is not political, not subject to "whipping" arrangements and members should not encourage a political steer to be given or taken on an application.

## **Contact with applicants/developers**

It is recognised that local members can play an important part in the planning process, helping developers to understand local needs and demands, as well as local concerns about development and how these can be addressed. As such, it is expected that local councillors will discuss emerging applications with developers.

However, close relationships between councillors and developers can give a wrongful impression. Any applicants who approach councillors directly should be referred to the Planning Department to initiate discussions. Where councillors do have one-to-one contact with developers, they should make clear their role as a councillor and that they are primarily gathering information related to the application and it is good practice to inform the case officer where meetings / discussions have taken place (for example, where a local member discusses an application which has been recommended for refusal) to ensure there is a record of such discussions for transparency purposes.

Councillors can, where invited, attend meetings organised by officers, or attend where officers are present with the applicant when it is appropriate. Notes of such meetings should be retained to ensure there is a clear record of matters discussed and no party should over-commit the Council to supporting an application.

Councillors have a duty to act with appropriate confidentiality. Where councillors are informed regarding pre-application discussions, they should respect the confidentiality of such discussions and any information they are provided with. Officers will not normally consult or liaise with local members on pre-application discussions although they may inform the applicant of the need to discuss particularly sensitive/controversial issues which will have a significant impact on local communities with the local members.

Local councillors can attend local public meetings or developer exhibitions to gain greater understanding about applications and ask questions. They may also take soundings from the public at such meetings but should avoid predetermining themselves.

If a councillor receives unwarranted and unreasonable contact from a developer, they should immediately inform the Director (Growth and Planning) or the Service Manager (Planning Development).

### **Working as a developer, agent or lobbyist**

Councillors do have professional and personal lives. At times, a councillor's professional or personal life may cause conflict with their Council role, such as if a Councillor working for an architect's firm that regularly submits planning applications to the authority.

It is not advisable that councillors whose professional role regularly causes conflict with regards planning applications should sit as a standing member or substitute of the Development Control Committee. Similarly, if a councillor is involved with a planning application in their ward on a professional level, it is advisable for them to appoint an acting local member to support residents due to the potential conflict this could create.

Councillors on the Development Control Committee should not act as a lobbyist or advisor on applications and should not take on paid employment to advise on how to influence other members of the Committee.

If any councillor has been approached or is seeking work as a developer, agent, lobbyist or advisor with regards matters in the scope of the Development Control Committee they should inform the Monitoring Officer and Director (Growth and Planning) before agreeing to such roles to discuss potential conflicts this may create and how these should be avoided.

### **Member/officer relations**

Members should not put pressure on Officers to put forward a particular recommendation. Councillors can put forward alternative views as part of a representation on the application but again need to be mindful of predetermination.

Officers are part of a management structure. If members have a concern about how an officer is handling an application, they should seek to raise those concerns with their line manager. Councillors should respect that as Officers, they are duty bound to put forward their professional opinion, in line with the relevant officer and professional Codes of Conduct even if it is at odds with the views of the Committee or its members.

Local members may request that applications are referred for Committee decision, rather than being delegated to officers. If an application in the member's ward is being considered by the Delegation Panel, members should provide their views on a timely basis and attend the Panel meeting if they can. If councillors believe a proposal should go to Committee, then reasons for this should be clearly recorded and relate to material planning matters, and not just personal opinions or weight of local feeling.

### **Knowledge and training**

Members should ensure they familiarise themselves with the application ahead of the Committee meeting. If members have questions, they should take the opportunity to ask questions of officers to understand the proposals. It is helpful that if members have concerns that have not been addressed within Committee reports they seek to raise this with officers in advance of the Committee in order that responses can be provided to inform the decision.

Members of the Committee should be proactive in keeping up-to-date with any changes in the planning framework, including government guidance, the local plan and supplementary documents. Planning is a regulatory function and poor decision making can be of detriment to the Council and local residents as it risks applications being dealt with through the appeals process rather than within the local authority's control. In addition, planning decisions can be subject to legal challenge.

To demonstrate their commitment to ensuring sound decision making, Committee members and named substitutes will undertake compulsory training, to consist of at least one session in each six month period that meets one of the following criteria:

- A training or briefing session organised by Council officers, which officers\* indicate is accredited training.
- A training session organised by a relevant organisation (normally Royal Town and Planning Institute, the Planning Advisory Service, the Local Government Association or another Council), attendance having been approved by Officers\*.
- Online learning approved by officers\*.

(\*Officers shall mean the Chief Executive or a Strategic Director; the Monitoring Officer; the Director (Growth and Planning) or the Service Manager (Planning Development).)

If a councillor has not received the requisite training and is thus not considered accredited to sit on the Development Control Committee, they should seek a substitute member for all Committees until they have received training. In exceptional cases where the Committee would not otherwise be quorate, the Monitoring Officer or Legal Officer present at a Development Control Committee may waive the compulsory training requirement for any individual Member.

In addition to Committee members, all members will be called upon to act as local members on applications, and to be at their most effective should ensure they take steps to keep themselves informed and up-to-date. It is therefore expected that all councillors should undertake training at least once a year in line with the approach outlined above for Committee members.

## **Site Visits**

Members of the Development Control Committee should try to attend all site visits organised by the Council. The site inspection should be treated simply as an inspection; councillors may seek further information from officers and observe the site but should not engage with, or seek information about the application from the applicant, objectors or any other third parties.

Councillors should avoid expressing clear opinions or views at site inspections and reserve judgement until the Committee.

Councillors on the Development Control Committee should avoid lone site visits, even if they were unable to attend the organised site inspection. If a councillor considers it necessary to conduct a site visit and cannot attend the organised event, they should seek to contact the case officer to understand whether any existing additional visits are anticipated (officers are not expected to organise additional visits for councillors). Councillors may also seek to review sites themselves, but should safely remain on publicly accessible roads and paths and should not enter onto the physical application site themselves to avoid any impression of unfairness.