

# PLANNING CODE OF PRACTICE

1. Introduction

2. General roles, responsibilities and conduct

3. Administrative processing arrangements

4. Pre-application/decision and enforcement discussions

5. Lobbying of members of the planning committee

6. Planning applications submitted by members, community councils and officers

7. Planning applications submitted by the council

8. Officer's reports to the planning committee

9. Conduct and procedure of planning committee meetings

10. Planning committee decisions

11. Planning committee decisions contrary to officer recommendation

12. Appeals against council decisions

13. COUNCIL - 31ST JULY, 2007

14. Review of decisions

**ADOPTED BY**

**COUNCIL - 31ST JULY, 2007**

## CONTENTS

1. Introduction
2. General roles, responsibilities and conduct
3. Administrative processing arrangements
4. Pre-application/decision and enforcement discussions
5. Lobbying of members of the planning committee
6. Planning applications submitted by members, community councils and officers
7. Planning applications submitted by the council
8. Officer's reports to the planning committee
9. Conduct and procedure of planning committee meetings
10. Planning committee site inspections
11. Planning committee decisions contrary to officer recommendation
12. Appeals against council decisions
13. Member training
14. Review of decisions

## **1. INTRODUCTION**

- 1.1 This code of practice is intended to guide the procedures by which councillors (members) and officers of the council deal with planning matters, and to set standards of probity and conduct which the people of Caerphilly County Borough can expect.
- 1.2 As planning affects people's lives and private interests, it can often be very contentious. It is, therefore, important that the people of Caerphilly borough understand the system and have confidence in its integrity and transparency, and that members and officers involved in the planning process, avoid impropriety or even the suspicion of impropriety. This approach is endorsed by the Committee on Standards in Public Life (the Nolan Committee), the District Audit and the Local Government Association.
- 1.3 Members must follow the Codes and Protocols in The Constitution of Caerphilly County Borough Council (The Constitution), Part 5 of which covers such matters as declarations of interests, gifts and hospitality and the Protocol for Member/Officer Relations. When dealing with planning matters they must also act in accordance with this Planning Code of Practice.
- 1.4 A breach of these codes whilst not usually amounting to a breach of criminal law, may adversely affect the standing of the Council. It could result in a decision being judicially reviewed or in a complaint of maladministration, being made to the Local Government Ombudsman. A breach of the Members' Code of Conduct can result in a complaint against a member personally.
- 1.5 If members or officers are in doubt about the application of the codes they should seek advice from the Council's Monitoring Officer.

## **2. GENERAL ROLES, RESPONSIBILITIES AND CONDUCT**

- 2.1 Members and officers have different, but complementary roles in the planning process. Members of the Planning Committee have different roles to those of other councillors.

### **Members of the Planning Committee**

- 2.2 Councillors who are members of the Planning Committee determine the more significant and contentious planning applications received by the council. In doing so those members perform a quasi-judicial role and are required to consider all planning proposals in the wider public interest. Other applications are delegated to the Chief Planning Officer and the Development Control Manager to decide, as described in paragraph 2.10.
- 2.3 Planning Committee Members shall:
  - Exercise personal responsibility in deciding whether to declare any personal interest as defined in the Code of Conduct in relation to any planning application that is before the Planning Committee for determination, and

withdraw, if so required by the Code. If in doubt, members should consult and seek guidance from the Monitoring Officer.

- Act fairly and openly and avoid any actions that would give rise to an impression of bias.
- Avoid social contact with applicants and their agents, objectors and other interested parties which could put, or be seen as putting, the member under an obligation, or could create an impression of bias.
- Approach each planning application or issue with an open mind, avoiding preconceived ideas.
- Not organise support for or opposition to a planning application or express a view about the merits or otherwise of an application if they do not wish to affect their ability to vote at Planning Committee.
- Carefully weigh up all relevant planning issues before making a decision.
- Make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality. Whilst Planning Committee members have a special responsibility to their electoral division constituents, the decisions of that committee must be based on material planning considerations.
- Not decide how to vote on applications on the basis of a political 'whip', but only on the planning merits of each case. Subjecting a planning decision to the discipline of the political 'whip' could result in a judicial review, or maladministration complaint.
- Have reasons and justification for their position and resolutions (this is a requirement of the Code of Conduct).

#### **Members of the Planning Committee who are also members of community and town councils**

- 2.4 Membership of a community and town council provides an opportunity to listen to local views and does not of itself give rise to a conflict of interest for a Planning Committee member provided he or she maintains an open mind until all the evidence and arguments have been presented at the Planning Committee. A member does not have to declare an interest at the Community/Town council that he/she is a member of the Planning Committee, unless the matter under discussion is an application by the County Borough Council.
- 2.5 Legally a member may participate and vote when a planning application is under consideration at a meeting of the community town council. However, such involvement could give rise to a perception that the member has already formed a view as to how he or she would vote in advance of reading the full and final report to the Planning Committee and hearing the debate. That could undermine the integrity of the decision made by the Planning Committee and the decision could then be

challenged on appeal, in the courts or by a claim of maladministration made to the ombudsman.

- 2.6 Members should therefore choose whether they should take part in debates at the community or town council or at the Planning Committee. This does not prevent a member listening to a debate at a community council, so long as the member does not take part in the debate.

#### **Non-Committee members of the council**

- 2.7 Members who are not on the Planning Committee represent their electoral division and the county borough as a whole. They may attend the Planning Committee and address it for no more than five minutes but may not take part in any debate and will not have a vote on any matter. They may also attend site visits. Such members do not act in the quasi-judicial role performed by Planning Committee members, but shall:

- Act fairly and openly and avoid any actions that would give rise to an impression of bias or undue influence.
- Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties.

- 2.8 Such members may express support for a particular opinion in advance of the matter being considered by the Planning Committee, or by the Chief Planning Officer and Development Control Manager under delegated powers.

- 2.9 A member who has declared an interest in a matter is not permitted to attend the Planning Committee, either as a councillor or as a private citizen.

#### **Officers**

- 2.10 The function of officers is to support and facilitate the councillors in their work and to implement lawful decisions.

- 2.11 The Chief Planning Officer and the Development Control Manager make decisions on the majority of planning applications under delegated powers and make recommendations on more significant and contentious applications and other planning matters for decision by the Planning Committee. In considering applications and in advising members and the public on planning policy, the determination of planning applications, enforcement and other planning matters, officers must:

- Act fairly and openly and avoid any actions that would give rise to an impression of bias.
- Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties.
- Approach each planning application or issue with an open mind, avoiding preconceived ideas.
- Carefully weigh up all relevant planning issues
- Make decisions purely on planning grounds having regard to the development

- plan and other material considerations.
  - Give professional, objective and accurate analysis of the planning issues.
  - Give a clear recommendation.
  - Carry out the decisions of the Planning Committee.
- 2.12 The council's legal officers advise members on legal and procedural matters. In doing so, they must:
- Act fairly and openly and avoid any actions that would give rise to an impression of bias.
  - Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties.
  - Give professional, objective and consistent advice.
  - Carry out the decision of the Committee insofar as they relate to the completion of any legal agreement, or instigation or defence of proceedings etc.

### **3. ADMINISTRATIVE ARRANGEMENTS**

#### **Planning application notification**

- 3.1 All the members of the council will be informed of the submission of all planning and related applications through the weekly list of planning applications.
- 3.2 The weekly applications list will indicate whether the application decision is expected to be made by the Planning Committee or by officers under the scheme of delegation.

#### **Meetings with applicants and objectors**

- 3.3 Local members will not be informed of, or invited by the Planning Division, to any meetings with applicants or objectors in respect of any application in their electoral division, although the applicant or objector may invite them. Should members attend any such meetings they should be aware of the need to avoid expressing any support for or objection to the proposal.
- 3.4 The local planning authority does not organise public meetings in respect of any application. The statutory planning process which includes a procedure for notifying occupiers of land neighbouring an application site provides ample opportunity for the public to make its views known about a proposal.

#### **Determination process**

- 3.5 Should a member wish an application, designated to be determined under delegated powers, to be determined by the Planning Committee, he or she should make a request in writing, which includes e-mail, to the Chief Planning Officer within 21 days of the issue of the weekly list that contains that particular submission.
- 3.6 Members shall not put pressure on officers to make particular recommendations or decisions, nor to change recommendations or decisions in respect of any application.

#### **4. PRE-APPLICATION DISCUSSION AND ENFORCEMENT DISCUSSIONS**

- 4.1 Local planning authorities are encouraged to enter into discussions and negotiations, which can bring about improvements that can make an application acceptable, and thereby potentially speed up the process.
- 4.2 Such discussions will normally take place at officer level and members shall, wherever possible, refer requests for such advice to the officers. If members become involved in such discussions they should make it clear that their views are personal and provisional and they may wish to make a record of the discussion.
- 4.3 All officers taking part in such discussions shall:
- Identify the decision making process applicable to the application or issue under discussion.
  - Make it clear that only personal professional and provisional views can be expressed that will not bind the council to reach a particular decision when determining an application.
  - Express views in the context of the development plan and other material planning considerations.
  - Be consistent in interpreting planning policies and government guidance.
  - Where appropriate advise applicants, neighbours and objectors on procedural matters.
- 4.4 Occasionally local people or community and town councils will arrange public meetings to discuss a current application and may invite the applicants, members and officers to attend. Officers will not attend such meetings, and any councillors attending should abide by this code and The Constitution. Officers may attend normal meetings of town and community councils but only to convey information to and listen to the views of the members of those councils, and not to enter into a debate.

A member of the Planning Committee who expresses a view about an application at such a meeting will put at risk their ability to participate at the Planning Committee meeting.

#### **5. LOBBYING OF MEMBERS OF THE PLANNING COMMITTEE**

- 5.1 Lobbying is the process by which applicants, agents, neighbours, non-planning committee members and other interested parties may seek to persuade councillors on the Planning Committee to come to a particular decision. It is legitimate for them to approach members of the Planning Committee (in person or in writing) and such discussions may help members to understand the issues and concerns. As stated in the Nolan Committee Third Report, 'It is essential for the proper operation of the planning system that local concerns are adequately ventilated.'
- 5.2 In responding to approaches of this kind, Planning Committee members should not publicly express an opinion that may be taken to indicate that they have made up their minds prior to hearing all the evidence and arguments, which will be presented

at the Planning Committee. They should explain their position in respect of probity if they express an opinion on a proposal before consideration at the Planning Committee. They should:

- Explain the procedures by which representations can be made.
- Indicate that a decision will be taken only when all relevant planning considerations have been taken into account.
- Explain the kinds of planning issues that the council can take into account.
- Report issues raised to the officers or direct the public to the officers so that their views can be considered.

5.3 Although it is not unlawful for a member of the Planning Committee to publicly support a particular outcome, or express a view on an application prior to the meeting of the Planning Committee, such involvement could give rise to a perception that the member has already formed a view as to how he or she would vote in advance of reading the full and final report to the Planning Committee and hearing the debate. That could undermine the integrity of the decision made by the Planning Committee and the decision could then be challenged on appeal, in the courts or by a claim of maladministration made to the ombudsman.

5.4 Members should not give any indication that they have made their mind up about a planning application prior to consideration of a full report and debate at Planning Committee.

## 6. **PLANNING APPLICATIONS SUBMITTED BY MEMBERS, COMMUNITY AND TOWN COUNCILS AND OFFICERS**

6.1 Planning applications submitted by, or on behalf of members or officers employed by the council, or by, or on behalf of a spouse, partner, parent, child or sibling of a member or officer of the council, where known, shall be decided by the Planning Committee and not under delegated powers by the Chief Planning Officer or the Development Control Manager. This will also apply where that person is acting as an agent for another party.

6.2 The affected member or officer must declare the existence and nature of the interest or relationship in accordance with the appropriate Code of Conduct and withdraw from involvement in the decision.

6.3 The affected officer shall take no part in the processing of the application and any recommendation made to the Planning Committee.

6.4 Where a community or town council submits a planning application, the county borough council members who are also members of that community or town council should disclose their interest and not participate on that application should it come to Planning Committee for decision. (Note that while the Code of Conduct allows a member to speak but not vote having declared that interest, the member should not participate, so as to protect the decision from being challenged by way of judicial review).



## **7. PLANNING APPLICATIONS SUBMITTED BY THE COUNCIL**

- 7.1 It is essential that the council treat applications for its own development (or a development involving the council and another party) in the same manner as all other applications and that this is seen to be the case.
- 7.2 All such proposals will be subject to the same administration processes, including consultation, as private applications. Determination shall similarly take into account planning policy and any other material planning considerations.
- 7.3 Where appropriate, applications submitted by the council should be dealt with under delegated powers in accordance with the scheme of delegation.

## **8. OFFICERS' REPORTS TO THE PLANNING COMMITTEE**

- 8.1 All planning matters considered by the Planning Committee will be the subject of appropriate written reports by the Chief Planning Officer incorporating his recommendations. Such reports shall be comprehensive but succinct in setting out the key planning issues to be considered in terms of the provisions of the development plan and other material planning considerations, the substance of any representations received and any relevant planning history.

## **9. CONDUCT AND PROCEDURE OF PLANNING COMMITTEE MEETINGS**

### **Conduct**

- 9.1 The chairperson of the Planning Committee is responsible for the conduct of the meeting in accordance with the Rules of Procedure (Part 4 of The Constitution), and for the effective delivery of business in a professional, courteous and transparent manner. The members of the committee and officers shall respect that role and behave in a manner that is commensurate with the high standards of conduct and propriety that are expected in public office.
- 9.2 The chairperson will seek to ensure that members and officers are treated in accordance with the council's agreed Protocol on Member/Officer Relations, with regard to:
  - The political neutrality of officers
  - The independence of officers
  - Mutual respect, courtesy, civility and professionalism with respect of differing views.
- 9.3 Members of the public are permitted to address the meeting in accordance with the council's agreed procedure. Where disturbance of the meeting occurs by way of public interference, the chairperson may suspend proceedings until matters are resolved or in extreme situations may close the meeting to the public.

## **Procedure**

- 9.4 The deliberations of the Committee will be confined to the published agenda and any urgent items that have been accepted by the chairperson in accordance with the Local Government Act 1972. The order of business will generally be in accordance with the agenda but the chairperson will seek to bring forward items of business that members of the public or applicants have come to hear.
- 9.5 The chairperson will ensure that meetings of the Planning Committee are conducted in accordance with the council's Rules of Procedure and safeguard that appropriate debate is able to take place in a structured and professional manner, with members being given the opportunity to raise material planning issues (normally through a single presentation). The chairperson will seek to avoid repetition or irrelevant debate.
- 9.6 Members shall endeavour to give not less than 24 hours notice (preferably in writing) to the Chief Planning Officer all questions requiring a technical or detailed response so that an appropriate response can be prepared for the meeting of the Planning Committee.
- 9.7 Planning officers will update the Planning Committee on each application in respect of submissions and other material matters not addressed in the main report and, through the chair, will be responsible for responding professionally to member questions.
- 9.8 Appropriate legal or administration officers will be responsible for advising the chairperson and the committee on matters of procedure and protocol.
- 9.9 Where officers advise the chairperson of material professional concerns or potential consequences of a particular course of action, or of any potential liabilities or errors of fact, officers shall be afforded reasonable opportunity to concisely explain those matters to the Planning Committee before it reaches a decision.

## **10. SITE INSPECTIONS**

### **Purpose of site inspections**

- 10.1 Site inspections are fact-finding exercises to allow members to make a more informed decision than would be possible from reading the officer's report and considering the views expressed at the Planning Committee meeting.
- 10.2 The sole purpose of site inspections is to allow the chairperson and vice-chairperson and other members to look at the site and its surroundings. In conducting the site visit, the members will not formally debate the application, express a prior opinion, lobby for any particular decision or come to any decision.

### **Requests for Committee site inspections**

- 10.3 Requests by members for site inspections in respect of committee cases should wherever possible be made to the chairperson of the Planning Committee or the

Chief Planning Officer, in writing at least 48 hours before the committee to which the application is being reported. Such a request should indicate why a site visit is necessary. Early notification allows the clerk of the committee to advise members of the public who may otherwise have attended the committee not to do so. The Chief Planning Officer will consult with the chairperson before deciding whether to agree to the member's request. Similarly, if the chairperson receives a request, he should consult with the Chief Planning Officer. Members may also request a site visit at the Planning Committee and should indicate why a site visit is necessary.

- 10.4 Site visits should only be allowed on the basis of a request from either the chairperson or vice-chairperson, or from any local member or any member of an adjoining ward whether or not a member of the committee. It is expected that local members will already be familiar with the site.
- 10.4 Site visits may also be arranged, at the behest of the Chief Planning Officer or Development Control Manager when they consider that there are particular site issues that members should be aware of prior to the determination of the application.

#### **Criteria for agreeing to hold site inspections**

- 10.5 Site visits requested after the application appears on the committee report delay determining the application. While the decision whether or not to undertake an inspection in such circumstances is a matter for the Planning Committee, members shall only make such visits where the Planning Committee cannot otherwise make an appropriately informed decision and the inspection would have substantial benefit. Examples where a site visit would not normally be appropriate include where:
- The member simply disagrees with the conclusion reached in the report.
  - The member wishes to consider boundary or neighbour disputes.
  - Loss of property values
  - Any issues that are not material planning considerations.
  - Where councillors have already visited the site within the last 12 months, except in exceptional circumstances.

#### **Notification of site visits**

- 10.6 Site visits will normally be attended by the chairperson and vice-chairperson of Planning Committee, ward members and appropriate officers. Where appropriate adjoining ward members will be invited and in exceptional circumstances the whole of the committee.
- 10.7 Members may through the chairperson ask questions of officers to clarify factual matters relevant to the site inspection.
- 10.8 If a request is received from a third party to inspect the site from a different location, the members, as a group, should take the view whether to do so. Unless there are good reasons not to do so, such a request should normally be acceded to but only if all participants at the site inspection are extended the same invitation.

### **Attendance at site inspections**

- 10.9 Members may only enter onto the site with the permission of the site owner who has the right of attendance at the site inspection.
- 10.10 The public does not have a right of access to a site but may attend and view the site by way of public vantage points or on site with the consent of the owner.
- 10.11 The public cannot address the meeting.
- 10.12 If a member finds it necessary to visit a site alone, he or she shall view it from public vantage points only, seek to avoid discussion with interested parties and, if dialogue occurs, make it clear that a decision will be taken when the Planning Committee has discussed it after the site inspection.
- 10.13 **Members are reminded that the rules of declarations of interest apply to site visits, and that if a member has an interest that would require the member to withdraw from a Planning Committee, the member is not entitled to attend the site meeting.**

### **Conduct at site inspections**

- 10.14 The inspection will be chaired by the chairperson or vice chair of the Planning Committee who will ensure that it is conducted as a single meeting and in an orderly fashion.
- 10.15 The planning officer will give a brief summary of the application and the site inspection issues at the beginning of each site visit.
- 10.16 Members of the Planning Committee attending the site inspection shall not make comments that would create an impression that they have already formed a view on the merits of the application.
- 10.17 Members of the Planning Committee shall not discuss the application, other than to clarify issues of fact, and shall not make a decision while on site.
- 10.18 Non-Committee members may address their colleagues on issues of fact pertaining to the site context.
- 10.19 The applicant or members of the public will not be permitted to address members during the site inspection, but may be asked to clarify issues of fact by the chairperson.
- 10.20 Once the formal site meeting is concluded at the chairperson's discretion, and depending on the time available, an informal discussion may be held with the applicant, any agent, and any members of the public. In such a situation members and officers should continue to abide by this code.

## **11. PLANNING COMMITTEE DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 11.1 From time to time the Committee will disagree with professional advice given by the officers and may decide to determine an application contrary to that advice. When this occurs the chair of the Planning Committee will ensure that the following principles are followed:
- Members shall clearly express the planning reasons for their decision and these shall be minuted.
  - A member proposing refusal of an application for which the officer recommendation is approval shall state his/her reasons prior to the vote being taken.
- 11.2 In the cases when this occurs the matter shall be deferred for a further report at the following or subsequent meetings in which officers will advise members of the appropriate wording of the reasons for refusal. Officers shall be given an opportunity in that report to explain to the Planning Committee the planning or legal implications of their intended decision before the decision is confirmed.
- 11.3 Where the Planning Committee wishes to add or amend conditions or reasons, or attach a planning obligation, officers shall be given the opportunity to explain the planning or legal implications before the decision is confirmed.
- 11.4 The committee shall ascertain officers' views in respect of paragraph 12.5.

## **12. APPEALS AGAINST COUNCIL DECISIONS**

- 12.1 Officers will organise and generally appear as witnesses at planning appeals and other proceedings on behalf of the council. In some circumstances (such a where specialist evidence is required or where a member decision is contrary to officer recommendation) it may be necessary to appoint consultants to appear for the council.
- 12.2 In giving evidence officers will present the best possible case on behalf of the council while complying with the RTPI Code of Professional Conduct, which requires that planning officers who are members of the institute do not make statements purporting to be their own, but which are contrary to their *bona fide* professional opinion.
- 12.3 In cases where the appeal is against a decision that the committee has made contrary to officers' recommendation, the planning case-officer may be able to give evidence. However in some cases, another officer or consultants will be employed if the Chief Planning Officer considers that the case-officer's previously stated views (or those of the Planning Division as a whole) might be unhelpful to presenting the committee's position.
- 12.4 Members can have an important role to play in appeals and may, within set deadlines, make written representations to the inspector and may also appear at informal hearings or as a witness at public local inquiries. In doing so they should

state whether they are acting in their local councillor capacity or, exceptionally, representing the council's case.

- 12.5 Where planning officers are unable to defend decisions on appeal (due to requirements of the professional conduct rules of the Royal Town Planning Institute) the Planning Committee should be aware of this before the final vote is taken. In such cases, the committee shall nominate at least two of its members who voted contrary to the recommendation to appear at any appeal and defend the committee's decisions and the reasons for them. These should normally be the proposer and seconder of the proposal that was contrary to officers' recommendation. Those members will then be required to attend a subsequent appeal hearing, and if necessary, to give evidence in support of the Council's decision.
- 12.6 Planning and legal officers will support members attending or wishing to make representation at appeals and advise them on preparing and delivering evidence. Legal officers will attend inquiries or assist in preparing representations when legal representation is required.

### **13. MEMBER TRAINING**

- 13.1 The council considers that members of the Planning Committee should undertake training and that this opportunity be offered to all members.
- 13.2 Members will be offered and required to attend core training (normally within three months of appointment to the committee). The subject matter will cover planning procedures, the development plan and material planning considerations, probity and other subjects determined from time to time by officers in consultation with the members. The Council, or political groups as appropriate, will be asked to remove from the Committee a member who fails to undertake this training.
- 13.3 Other training will be available in the form of additional sessions, short presentations to the committee and the circulation of briefing notes.
- 13.4 Attendance at training events will be recorded and will be monitored through the relevant scrutiny committee.

### **14. REVIEW OF DECISIONS**

- 14.1 The Audit Commission's report 'Building Quality' recommends that councillors should visit a sample of implemented planning permissions to assess the quality of the decisions. The purpose of such a review is not to change decisions, but to assess and improve the quality and consistency of decisions and thereby strengthen public confidence and assist in reviewing planning policy.
- 14.2 The Planning Committee will undertake an annual review of a sample of planning decisions made by the committee. The review will include examples from a range of development types e.g. major residential proposals, listed building consents and enforcement cases, and, where it is considered appropriate and beneficial, include visits to the sites.

- 14.3 The Planning Committee will formally consider the results of the review and decide whether it gives rise to the need for new policies, procedures and practices.
- 14.4 The outcome of appeals against the decisions of the council will be reported regularly to Planning Committee. The outcome of enforcement cases and legal proceedings will also be reported regularly so that the Planning Committee can review its own decision-making processes.

