

# ***Planning Code of Conduct for Councillors and Employees***

## **Planning Code of Conduct for Councillors and Employees**

### **1. Introduction**

- 1.1 This Code has been written to advise all those concerned with planning matters at City of Wolverhampton Council. Planning is not an exact science, rather, it relies on informed judgement within a policy context. It can be highly contentious because its decisions affect the lives and the private interests of individuals, landowners, and developers. This is heightened by the openness of the system (it actively invites public opinion before taking some decisions) and the legal nature of development plans and decisions notices. It is important, therefore, that the process is open and transparent.
- 1.2 One of the key purposes of the planning system is to enable good development in the public interest. The Council should make planning decisions openly, impartially, with sound judgement, and for justifiable reasons. The process should leave no ground for suggesting that a decision has been partial, biased, or not well-founded.
- 1.3 Councillors and employees are requested to read this Code thoroughly and to put it into practice consistently. It is intended to review the Code regularly so that it remains useful and relevant. If any points are unclear or need review, please contact the Director of Governance or his/her nominated officer, the Head of Planning or Democratic Services. The responsibility for complying with the Code lies with the individual Councillor.

### **2. General Principles**

- 2.1 Councillors are reminded that they are required to comply with the statutory provisions on the disclosure of interests, the Council's Constitution and the Council's Code of Conduct for Councillors, which forms part of the Constitution.
- 2.2 Employees involved in the processing and determination of planning matters must also act in accordance with the Council's Constitution and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct and the Employee's Code of Conduct.
- 2.3 Whilst this Planning Code deals primarily with planning applications, its principles also apply to consideration of 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 and ignore irrelevant matters. A key principle is that Councillors should represent the interests of the City as a whole.

### **3. General Roles of Councillors and Employees**

- 3.1 Councillors and employees have different, but complementary roles; both serve the public but Councillors are responsible to the electorate, whilst employees are responsible to the Council as a whole. A successful

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relationship between Councillors and employees can only be based upon mutual trust and understanding of each other's position. This relationship must never be abused or compromised.

- 3.2 When Councillors come to make a decision on a planning matter they must:
- a. Act fairly and openly;
  - b. Approach each application with an open mind;
  - c. Carefully weigh up all relevant issues;
  - d. Determine each application on its own merits;
  - e. Avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another;
  - f. Ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated;
  - g. Avoid expressing a fixed view on a case before it is heard by the Planning Committee;
  - h. Declare any interests.
- 3.3 The employee's function is to advise and assist Councillors in matters of planning policy and in their determination of planning applications, enforcement issues and any other planning matters by:
- a. Providing impartial and professional advice;
  - b. Making sure that all relevant information necessary for the decision to be made is given;
  - c. Providing a clear, accurate and succinct analysis of the issues;
  - d. Setting planning applications, enforcement issues and other planning matters against the broader Development Plan policies and other relevant material considerations;
  - e. Giving a clear recommendation;
  - f. Carrying out the Committee's decisions.

## **4. Declarations of Interest**

- 4.1 The Localism Act 2011 repealed the previous standards regime. It required the Council to introduce a code dealing with the conduct expected of Councillors. The Code has to be consistent with the Nolan Seven Principles of Standards in Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- 4.2 This document is supplementary to the City Council's Code for Councillors. The Act abolished the previous regime of personal and prejudicial interests and replaced them with "Disclosable Pecuniary Interests". In addition to Disclosable Pecuniary Interests there are other interests which are commonly known as Non-Disclosable Pecuniary or Non-Pecuniary interests and which are referred to below.

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### **4.3 Disclosable Pecuniary Interests (DPI's)**

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 defines DPI's and these are set out in the Schedule in the City Council's Code of Conduct.

Where a Councillor has a DPI or his/her spouse/civil partner/person with whom he/she is living as husband or wife or as if they were civil partners has a DPI (and the Councillor is aware that the other person has a DPI) he/she should declare the interest, must not participate and must not vote.

The Councillor must also decide whether to withdraw from the meeting. In deciding whether to withdraw from the room the Councillor must consider whether his/her continued presence would be incompatible with the Seven Principles of Standards in Public Life.

### **4.4 Other Interests (Non-Disclosable Pecuniary or Non-Pecuniary Interests)**

There will be some circumstances in which the Councillor has an interest but it is not a DPI. Those are commonly known as personal interests (but not as defined under the previous regime).

- a. A Councillor has a personal interest where the decision relates to or is likely to affect the interests listed in the Schedule to the City Council's Code, not in respect of the Councillor or their spouse/partner etc. but in respect of another member of their family or a person with whom they have a close association.
- b. Also a Councillor has a personal interest where a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of the Councillor or a member of their family or a person with whom they have a close association to a greater extent that it would affect the majority of Council Tax payer, ratepayers or inhabitants of the ward or electoral area for which they have been elected or otherwise of the Council's administrative area. Membership of a Trade Union constitutes a personal interest

- 4.5 It is the responsibility of the individual Councillor to consider whether to declare a personal interest and whether the interest warrants withdrawal from the meeting when the matter arises.

The table below sets out the action that should be taken (unless there are dispensations)

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<b>Type of interest</b>	<b>Action to be taken</b>
Non-Pecuniary Interests/ Non-Disclosable Pecuniary Interests	Declare at start of meeting or as soon as it becomes apparent. Participate and vote unless continued presence incompatible with the Seven Principles of Standards in Public Life
Disclosable Pecuniary Interest	Do not influence the decision in any way.  Do not participate or vote.  Withdraw if continued presence incompatible with the Seven Principles of Standards in Public Life

- 4.6 Sanctions in respect of Disclosable Pecuniary Interests  
There are various sanctions available including criminal proceedings. The Council's decision could be challenged and the Council could be liable to pay compensation. In extreme cases the Councillor would also be held liable to pay compensation.

### **5. Pre-Application and Pre-Decision Discussions**

- 5.1 The Localism Act, particularly Section 25, has given Councillors more freedom to engage in pre-application and pre-decision discussions. Nevertheless, in order to avoid perceptions that Councillors might have fettered their discretion, such discussions should take place within the following guidelines:
- a. Councillors and employees should make it clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
  - b. Employees should be present with Councillors in meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations which should be done by employees (keeping interested Councillors up to date) to ensure that the authority's position is co-ordinated.

### **6. Attendance at Public Meetings**

- 6.1 When attending public meetings, Councillors must be accompanied by an employee and they should take great care to maintain their impartial role as a Councillor. They should listen to the points of view expressed by the speakers

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and the public. Councillors must not state a conclusive decision on any pre-application proposals and submitted planning applications. To do so could lead to allegations of prejudice or bias and prevent the Councillor from taking part in the decision making process.

### **7. Lobbying and Predetermination**

7.1 It is likely that on occasion Councillors will be approached by prospective and actual applicants (and agents) or members of the public with a view to them lending support to the proposal, or indeed opposing it. When Councillors are lobbied they need to exercise great care to maintain the Council's reputation, the Councillor's own integrity and the public perception of the planning process.

7.2 It was considered that previous rules stifled discussions. Section 25 of the Localism Act 2011 has changed the previous rules of pre-determination and lobbying to some degree. It acknowledges that Councillors are often under pressure to play an active part in local discussions and so there is more scope for involvement in local issues.

"Past history of a closed mind is now irrelevant unless there is also evidence of a closed mind at the actual time of the decision".

7.3 Earlier comments or actions may be taken into account with what happens at the meeting. So, if a Councillor had supported the application before the meeting, and then appears to try to push through the application at the meeting, an appearance of a closed mind would be found. Conversely comments made before the meeting would be irrelevant if there was demonstrated to be careful and open-minded consideration at the meeting.

7.4 If they are approached, Councillors may wish to refer the person to another Councillor who is not a member of the Planning Committee or to the Planning Case Officer. If the lobbying persists then Councillors should expressly state that whilst they can listen to what is said, if they give any commitment (for or against) in respect of the application/proposal without all relevant information, it could prevent the Councillor from taking part in the decision making process.

7.5 Other than for formal site visits, Councillors should not enter the premises or sites which are, or are likely to be, the subject of a planning application.

### **8. The Party Whip**

8.1 Councillors must not accept an instruction from anyone to determine an application in a particular manner but must determine the issue on its merits. Therefore, it is inappropriate for any Party Group to instruct its members to vote in a particular manner. Where such a "Whip" has been applied, Councillors should declare it in exactly the same manner as they would declare any other attempt at lobbying.

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### **9. Public Participation**

- 9.1 The Council allows public speaking in accordance with its public speaking protocol. Details of the protocol are available from the Head of Planning or Democratic Services.

### **10. Reports to Planning Committee**

- 10.1 Reports to the Planning Committee on applications and other planning matters should be clear, accurate and succinct. They should include a written recommendation, give clear and unambiguous reasons for granting planning permission (with conditions to be attached) or refusal (with reasons).
- 10.2 The Chair, at the request of any member of the Committee, may adjourn the meeting for a reasonable period of time to enable the Councillors to have an opportunity of reading any information which has been tabled by the employees at the meeting.
- 10.3 As a general rule the members of the Committee will not take into account any written information at the meeting which has not been submitted by the developer/applicant or any consultees (including local residents) as part of the application process. However, in exceptional circumstances the Chair, in consultation with the employees present, may exercise his/her discretion to consider new information if it is appropriate to do so.

### **11. The Decision Making Process**

- 11.1 Councillors should not take part or vote on any matter if they have not read the committee report or if have not been present throughout the consideration of such matter (unless the item has been deferred from a previous meeting after being partially considered).
- 11.2 In discussing and determining a planning matter, Councillors should confine themselves to the planning merits of this case. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits.
- 11.3 Occasionally members of the Planning Committee will disagree with the professional advice given by the Head of Planning or his representative. As indicated above, planning is not an exact science and there can be genuine disagreement about the implications of a particular proposal. A senior legal officer will be present at Committee and will advise the Committee if the facts cannot support the conclusion which the Councillors have drawn and if the Committee is in danger of acting unreasonably. Any reasons for refusal or conditions associated with granting an application, which is contrary to the recommendation made by employees should be clear, convincing and based on sound planning grounds, failing which, the City Council may be put at risk of costs.

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11.4 Where Councillors wish to add or amend conditions or reasons for the refusal, the general content will be agreed at the meeting before the vote is taken and the final wording will generally be delegated to the relevant employee.

### **12. Committee Site Visits**

12.1 A site visit is private and its purpose is for Councillors to gain knowledge of the development proposal and to observe the characteristics of the site and its relationship to its surroundings. A site visit should only be called by the Planning Committee itself:-

- a. Where the impact of a proposed development is difficult to visualise from the submitted plans and any additional supporting material;
- b. Where there is a good reason why the comments of the applicants and/or any objectors to, or supporters of, the proposals cannot be expressed adequately in writing;
- c. Where the proposal is particularly contentious.

12.2 Site visits are not part of the formal consideration of the application and therefore public rights of attendance do not apply. They enable questions to be asked on site for clarification. Discussion on the merits of the application will only take place at the subsequent Committee.

12.3 The site visit shall take place during normal working hours as far as is practicable unless there are reasons which dictate otherwise.

### **13. Development Proposals of Councillors, Employees and the Council**

13.1 Councillors and Employees should never act as agents for individuals (including a company, group or body) pursuing an application, enforcement issue or other planning matter. If Councillors or employees submit their own development proposal to the Council they should take no part in its processing or the decision-making. The Council's Monitoring Officer should be informed by the Councillor of all such proposals as soon as they are submitted and shall ensure that such applications and/or matters are dealt with in a correct and open manner.

13.2 Applications made on behalf of the Council for its own development must be determined in an identical manner to applications made by the general public and with the same planning policy considerations applied. The Council's current practices and procedures achieve this with identical consultation and publicity in relation to the application. Decisions must be made strictly on planning merits and without regard to any financial or other gain which may accrue to the Council if the development is permitted.

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### **14. Planning Agreements**

14.1 Applications which propose or require planning obligations by agreement will generally be determined by the Planning Committee. The main issues to be addressed by the agreement will be included in the written report. If Councillors recommend an agreement which is not referred to in the report, Councillors should take into account the tests in the National Planning Policy Framework; Planning Obligations should only be sought where they meet all of the following terms:

- a. necessary to make the development acceptable in planning terms
- b. directly related to the development and
- c. fairly and reasonably related in scale and kind to the development.

### **15. Filming**

15.1 The City Council has a policy relating to recording and filming of meetings. The policy is set out in the Council's Constitution

### **16. Training**

16.1 No Councillor should be appointed to the Planning Committee without having agreed to participate in educational training programmes directed towards the role of Councillors in making planning decisions.