

CHICHESTER DISTRICT COUNCIL Development Management Services

Best Practice in Planning Guidance Note 1

Planning Applications: The Council's Code of Conduct (Revised: October 2011)

1. The Role of Councillors and Officers

Councillors and officers both serve the public but councillors are responsible to the electorate whereas officers are answerable to the Council as a whole. Officers advise the Council, its committees and councillors but are employed by the Council (not by individual councillors) and receive instructions through the Council or committee decisions.

The Council adopted its Code of Conduct for Members on 30th April 2002. Councillors are also guided by "Probity in Planning" issued by the Local Government Association in May 2009, which is available on the LGA website (www.lga.gov.uk). The Royal Town Planning Institute's Code of Professional Conduct guides officers who are Chartered Town Planners. Further advice on staff conduct is available in the Chichester District Council staff handbook and the committee procedural standing orders are set out in the Chichester District Council Constitution. Councillors making planning decisions must appreciate that the basis of the planning system is the consideration of private proposals in the wider public interest. Whilst Councillors should take account of constituent's views they should not favour any person, company, group or locality or put themselves in a position where they appear to do so. Councillors are advised not to accept gifts or hospitality from persons interested in development proposals. The role of Councillors may change in the future with the introduction of the Localism Act.

Officers must always act impartially – the staff handbook describes which posts are politically restricted and advises all staff not to carry out any political activity in a manner which might lead the public to think that they are acting in a Council capacity. Offers of hospitality should also be declined politely, but if unavoidable, should be of a minimum level and entered into a hospitality book whether accepted or not.

2. Planning Advice

Discussions may take place with a planning officer either prior to or during the course of consideration of a planning application and are generally encouraged. On 4th May 2010 a Pre Application charging scheme was introduced, the provisions of which are available on the following link to the web site (<http://www.chichester.gov.uk/index.cfm?articleid=14644>). In cases where advice is given it must be made clear at the outset that the discussions will not bind the Council to making a particular decision and that the views expressed are personal to the officer and are on a **without prejudice** basis. However, Officers are expected to have a clear understanding of the relevant Development Plan policies and any associated material considerations when providing informal advice.

A duty planner is available during the hours of 9.00am to 1.00pm Monday to Friday at East Pallant House to answer enquiries and to give general planning advice to callers. This advice is given on the basis of the information available at the time and is not binding on the Council.

Under the Council's policy Councillors may be involved in Public briefings about significant applications prior to their determination, the procedure is set out in the web site (<http://www.chichester.gov.uk/index.cfm?articleid=12264>)

3. Declaration of Interests In Planning Applications

The Council's adopted Code of Conduct for Members and the Council's Standing Orders describe the procedures to be adopted in matters coming before the Council in which councillors have a personal or prejudicial interest.

A member with a personal interest in a matter (e.g. by way of his membership of a club/organisation or where a decision may affect themselves, a relative or a friend) must disclose to the meeting the existence and nature of that interest. If such personal interest is also a prejudicial interest (i.e. one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest) the member must also withdraw from the room where the meeting is being held. A member with a prejudicial interest on a matter must not seek to improperly influence the decision concerning such matter in any way. However, this would not exclude the ability of a Councillor to speak as a member of the public. Where a councillor is unclear about their interest in a particular matter they should as soon as possible seek advice from the Principal Solicitor before the day of the meeting.

In the case of planning applications, any proposal submitted by a councillor or member of staff would be determined by the relevant committee for decision (whatever the recommendation) and the decision would not be made by an officer. Similarly any officer with a material interest in any application should declare such an interest in writing to the Assistant Director of Development Management (which will be placed on the file) and take no part in the decision making process. Proposals for the Council's own development will be treated in the same way as those by private developers in accordance with Government Guidance.

4. Officer report to Committee

Reports to the Area Development Control Committees need to demonstrate a consistent and logical approach in formulating a recommendation in accordance with the provisions of the Development Plan and taking into account any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the approach for determining planning applications and appeals namely that "If regard is to be had to the Development Plan for the purposes of any determination to be made under the Planning Acts the determination must be made in accordance with the plan, unless material considerations indicate otherwise".

(Further detailed advice is contained in Planning Policy Statement note No.1 General Policy & Principles supplement (The Planning System – General Principles).

Failure by the committees to adhere to this decision making approach may result in costs being awarded against the authority and constitute maladministration. It could also give rise to a judicial review of a decision as well as undermining the public's confidence in the process of decision making.

Committee reports will include:

- A clear reference to relevant Development Plan policies, Community Strategies and other related policy documents, site or related history and any other material considerations;
- An accurate summary of relevant consultation responses and the substance of third party views;
- A technical appraisal which justifies the recommendation;
- Recommendations, which are contrary to the Development Plan, will be fully explained.
- A formal written recommendation of how the application should be determined.
- A written update will normally be circulated at the committee and this should minimise the need for oral updating;

5. Committee Site Visits

The lack of a consistent approach to site visits can leave the Council open to criticism if this is seen as an arbitrary and unfair device. Therefore, the Council has adopted a Code of Practice, which briefly provides that:

- Site visits will be arranged at the discretion of the Area Development Control Committees when it is considered that the impact of the proposed development is difficult to visualise from the plans and supporting material, (including officer photographs) or when the proposal is particularly contentious;
- A visit will consist of an inspection by members of the committee and any other Members at the Chairman's discretion with a planning officer to explain the details of a proposal and answer questions;
- It is a private inspection and therefore the applicant, agent, Parish Council and third parties are not invited to attend.

The purpose of the visit is to view the site and its surroundings and strictly no debate regarding the planning merits of the case and no decision is taken on the application at the site visit.

For further details please see "Committee Site Visits" which can be viewed or downloaded from the Development Control Procedures page of Chichester District Councils web site <http://www.chichester.gov.uk/index.cfm?articleid=12264>.

6. Lobbying

Lobbying is recognised as a normal and perfectly proper part of the political process where those who may be affected by a planning decision approach a ward member or a member of a committee to try to influence the outcome. Councillors should avoid expressing an opinion as this may suggest that they have made up their mind before being able to consider all of the evidence and arguments, which will normally be available at the committee meeting. Indeed if a Councillor expresses an opinion at the meeting of his Parish Council, they should do so strictly on the basis of the

information available to date and without fettering their discretion in reaching their final view at the Area Development Control Committee. Interested parties should be encouraged to write to the Council to express their views on a particular proposal.

Furthermore, given that the point at which a decision on a planning application is made cannot occur before the Area Committee meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the committee meeting will not be used to decide how councillors should vote.

7. Public speaking at Committees

Members of the public are welcome to attend the Area Development Control Committee and the Planning Applications Referral Committee meetings. In addition, applicants or their agents, Parish Council representatives, objectors and supporters may address the Committee in accordance with the Council's Code of Practice for Public Speaking , which can be viewed or downloaded from the web site <http://www.chichester.gov.uk/index.cfm?articleid=12264>.

8. Decisions contrary to Officer Recommendation/Development Plan

Whilst there is no obligation upon a Committee to adhere to officers' recommendations, if a decision is made which is contrary to an officer's recommendation, a detailed minute of the reasons should be made. In particular when refusing planning permission against officer advice, councillors should be aware that they must have clear and precise grounds based solely on planning considerations. In the event of an appeal, costs may be awarded against the Council for unreasonable behaviour if it is unable to justify a refusal of permission.

In the event that the Committee is minded to determine an application in a manner which is contrary to the officer's recommendation and the officers have identified this as being a major departure from the Development Plan or inconsistent with the policies of the Council, the application will be referred to the Council's Planning Applications Referral Committee for determination with a recommendation from the relevant Area Development Control Committee.

The Council's Senior Planning Officers are Chartered Town Planners and are obliged by their code of professional conduct to: "not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions".

9. Regular review of Planning Decisions

The Area Development Control Committees undertake annual visits to completed developments to review planning decisions. Combined with regular training and updates on planning legislation, policies and procedures the Council is seeking to maintain and enhance the present quality and speed of decision making within the Development Management service.

10. Complaints

The Council has established a formal complaints procedure on which there is separate advice available on request.