

Report for Resolution

Report to	Planning Applications Committee 4 February 2010	Item 8
Report of	Head of Legal, Regulatory and Democratic Services	
Subject	Review of the Planning Services Code of Conduct	

Purpose

To consider the proposed revision of the planning services code of conduct in the light of revised

Recommendations

To approve the amendments to the code of conduct as attached to this report and shown as tracked changes.

Financial Consequences

There are no direct financial consequences arising from this report.

Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority “Strong and prosperous city – working to improve quality of life for residents, visitors and those who work in the city now and in the future”

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Background Documents

Report

Introduction

1. Since publication of the planning services' Code of Conduct of October 2007 amended guidance has been received from the Local Government Association dealing with good planning practice for councillors including their ability to participate in discussions prior to the receipt of a planning application. The attached proposed wording for the rewritten code takes account of the enhanced role of councillors and the appendices have been amended to take account of current practice.
2. Appendix I has been revised to incorporate the changes to the scheme of devolved powers as agreed by the committee at its meeting on 2 July 2009. The committee also resolved to review the Committee's Scheme of Delegations at the end of 6 months.

Publication

3. It is recommended that the code of conduct will be available on the Council's website and e-councillor and that it is regularly updated to take account of any changes. A printed copy will be available at planning reception for members of the public to view who do not have access to the internet. Printed copies will also be available on request to the committee officer.

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Purpose of this document

The city council's code of conduct provides guidance for elected councillors and paid council officials about the high ethical standards expected of all those in public service. Copies of these codes are available from the council's head of legal, regulatory, and democratic services (telephone 01603 212033) or the committee officer (telephone 01603 212033).

The city council makes decisions on planning applications, planning policies and other planning matters which have a considerable effect on the amenities which people enjoy, the character of the city and on the value of land. This code of conduct specifically addresses the issues and procedures involved in ensuring that the public have confidence that planning decisions are made in an open and fair manner taking account of all relevant information.

The principles for making planning decisions are laid down in the national planning policy guidance notes and in the East of England Plan and the city of Norwich Replacement Local plan (adopted Nov 2004).

The town and country planning acts require decisions to be made in accordance with the development plan unless there are material planning reasons not to do so.

It is necessary, however, in making decisions to exercise a level of judgement on the issues, in some instances to balance conflicting elements, and to take account of

replies to consultations with interested parties and the public.

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It is essential that decisions are made solely on proper planning issues and are made impartially, in a clear and open manner which can be easily understood by all, and which does not give rise to public suspicion or mistrust. Each local authority is required to adopt a code of planning practice, to show how national guidance notes on conduct are to be applied locally. This document sets out the city council's code of planning practice to provide a clear statement of the expectation of conduct by both councillors and officers, and procedures to be followed, so that decisions are made and can be seen to have been made, in a proper manner.

Role and conduct of councillors and officers

Councillors and officers have different but complementary roles.

Reference to councillors in this code are to those councillors dealing with planning matters.

All council staff must comply with the code of conduct for local government employees. Chartered town planners must adhere to the royal town planning institute's code of conduct, including those who are not members of the institute (Appendix II). Other specialist staff must comply with the requirements for conduct stipulated by their appropriate professional body.

Officers and councillors will treat each other with respect at all times, and not engage in personal criticism in the course of any meeting. Concerns about officer conduct should be addressed to the director of regeneration and development. Concerns about the conduct of councillors should be addressed to the chief executive.

Voting and impartiality

Councillors must reach planning decisions on the basis of the interests of the whole city. Their overriding duty is to the whole community rather than just the people living in their electoral ward.

Councillors will take due notice of the recommendation made by officers, but it is councillors of the city council who take the decisions, except where applications or other matters have been delegated to the **director regeneration and development** in accordance with the criteria agreed by the city council (Appendix I).

Recommendations and decisions shall not discriminate in favour of any individuals or groups, and shall be based firmly on the policies of the development plan unless there are sound planning reasons to do otherwise.

Councillors must form judgements and make decisions on the basis of the relevant reports, supporting evidence and recommendations presented, in a non partisan manner, with no pre-arrangements by any party or group as to how councillors will vote.

Lobbying

It is important to recognise that lobbying is a normal and perfectly proper part of the political process; however, lobbying can lead to the impartiality of a councillor or the council's decision being called into question unless care and common sense are exercised by all the parties concerned.

Lobbying can be oral or by the circulation of letters or documents to all or some councillors.

Problems can occur if councillors are given information or assurances by the applicants, agents or site owners which are not part of the formal application or proposal and which would not be enforceable. Problems can also arise if the information provided to councillors outside the formal process is misleading or untrue.

If approached by an applicant or someone affected by a proposed development, an individual councillor **who wishes to be part of the decision making process:**

- may listen to what is being said
- can give procedural advice, for example, the right to address the

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committee, how to make representations

- must **take care to avoid bias and predetermination or the appearance of bias and predetermination.**

In summary bias or predetermination exist where a councillor is closed to the merits of any arguments relating to a particular issue and makes a decision on the issue without taking them into account.

Where lobbying has taken place :

- the councillor should state that any comments should be put in writing and sent to the **director regeneration and development** so that the issues raised can be relayed to all councillors of the committee, and proper consideration given to these issues.
- in the absence of any written submission the councillor should declare at the relevant committee meeting the nature of the lobbying, who with, when, and the content of the issues raised, by whom and when.

Failure to follow these procedures could prejudice the proper consideration of the application and lead to deferral **so** delaying the determination of the proposal.

Declaration of interest/hospitality and gifts

The city council's code of conduct sets out the requirements for the declaration of personal or prejudicial interests for councillors.

A personal interest is if the issue being discussed affects the well being or finances of you, your family or your close associates more than most other

people who live in the area affected by the issue.

A prejudicial interest is a personal interest that affects the finances of you, your family or your close associates or relates to an approval, consent, licence, permission or registration that affects you, your family or **a** close associate and which a reasonable member of the public knowing the facts would believe likely to harm or impair your ability to judge the public interest.

The council's legal adviser can provide guidance for councillors. If in doubt, an interest should be declared.

An interest should be declared at the beginning of the meeting. A specific agenda item is included.

Where a councillor is not present at the beginning of the committee meeting, any interest should be declared as soon as practicable.

A councillor should leave the meeting during consideration of any item in which they have declared a prejudicial interest unless members of the public are allowed to make representations, when **the** councillor **can** also attend the meeting for that purpose but must leave the room once **the representations have been made.**

Councillors are responsible for ensuring that the register of their interests is kept up to date.

Hospitality and gifts (other than that which could be deemed reasonable, for example a simple working lunch) should be rejected, and a record of any approach passed to the head of legal and democratic services. Any gifts or hospitality which are accepted should be approved by the service director and notified to the head of legal and democratic services and recorded.

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Planning Applications made by Norwich City Council, councillors or planning officers

Applications made by the city council, councillors or planning officers will be treated in the same manner as if made by a private developer.

| All such applications will be referred for councillor decision, at the planning applications committee.

References will be made to the council, councillor, or officer interest. The councillor or officer will take no part in handling the application or in determining the recommendation or in making the decision on the application. Where a councillor frequently declares an interest and is therefore unable to take part in the proper consideration of planning matters referred to the committee, the council should review the presence of that councillor on the committee with a view to replacing them with another councillor whose interests would not prevent them considering and deciding on planning issues referred to the committee.

Pre-application discussions

Informal discussions between applicants, property owners and the council about proposed development can be beneficial to both parties, helping to address issues early in the formulation of schemes and speeding up the decision making process. It is a practice encouraged by Government.

It is essential that such discussions do not prejudice the proper consideration of the development or policy change when it is decided. To ensure this the following guidelines should be followed:

- Councillors should not advise owners, applicants or agents about the acceptability of planning proposals, or the likelihood of a change in policy, but should advise applicants to contact the **director regeneration and development** for further guidance.
- Councillors must not have **private** discussions with applicants, owners or agents in connection with development proposals or prospective changes in policy. **A private discussion could cause others to doubt the councillor's impartiality.**
- Officers should clarify to the applicant or their agent or site owners from the outset that discussions will not bind the council to making a particular decision.
- Officers will state that views expressed in any meeting about planning proposals are personal and provisional, since not all relevant information will be available, neither will consultation have taken place which may have a material effect on the recommendation.

- **On occasions details of major developments will be presented to members for their information prior to an application.**

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- Officers will ensure that any advice given will be consistent with the development plan and other material planning considerations.

Meetings with applicants/prospective developers/agents will be held at council offices unless there is an overriding reason such as the need to inspect the site at the same time, or where there is presentation material which cannot be easily transported, or displayed in the council offices.

Councillors should always bear in mind the need to have and be seen to have an open mind at the point of the decision making.

As a decision on a planning application cannot occur before the planning committee meeting, when all available information is to hand and has been duly considered, no political group meeting should be used to decide how councillors should vote.

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Councillors should avoid organising support for or against a planning application, and avoid lobbying other councillors. However, ward councillors who are also members of planning committee who wish to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, but not vote, having declared their pre-determined position. It is advisable for them to withdraw after the completion of public or ward councillor speaking opportunities to avoid any suggestion that members of committee were influenced by their continuing presence.

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Councillors should not put improper pressure on officers for a particular recommendation or a particular decision under a scheme of delegation, and should not do

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anything which compromises or is likely to compromise the officers' impartiality.

Reports to committee/council

Councillors must have the proper information to make an informed decision. The issues and reasoning behind the officer recommendation should be set out clearly in any report. The following information will be included in a report on a planning application:

- a clear description of the development proposed and the site, including a location plan
- a summary of the relevant development plan policies which must be taken into account in considering the proposal, including particular reference if the application is a departure from the plan
- the planning history of the site
- an accurate summary of the responses to consultation, and other representations received specifying where comments relate to schemes which have been subsequently amended
- an appraisal of the material planning
- Considerations
- a written recommendation
- a summary of the reasons for refusal, or conditions and any issues which would be included in **an agreement or undertaking made under Section 106, town and country planning act 1990.**

- the name of the case officer responsible for the application and their telephone number.

All reports will be available for public inspection in accordance with the provision for access to information included in the Local Government Act 1972.

The committee will not accept for consideration reports tabled at the meeting unless the committee resolves that there is an overriding reason for doing so (such as public safety).

Oral reporting of additional considerations which relate to representations which have been raised after the report was written may be made at the committee meeting. Minutes will be made of the issues raised and any response by officers.

Delegated decisions

The council's scheme of delegation authorises the **director regeneration and development** to decide specific categories of applications (Appendix I). These are largely not contentious. However, it is important that the same level of care and attention is given to ensure that all the material considerations have been taken into account, and that there is a clear reason for the decision made.

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All applications delegated for determination by the **director regeneration and development** will include:

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- a record of discussions/meetings
- a recommendation sheet including a summary of the relevant policies and other material considerations
- the recommendation including conditions/reasons for approval or refusal

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Section II The Decision Making Process

- confirmation of the recommendation made by the authorised senior officer.

Public speaking at committee

Public speaking will be allowed in accordance with the procedure note (Appendix III)

At the beginning of the meeting the chair will reiterate the guidelines, and will also exercise overall control and ensure compliance with the human rights act 1998, having regard to the complexity of the issues raised, and relevant material planning concerns.

Representations

It is important that the public and interested parties draw attention to material planning issues.

In some instances, in order to avoid unnecessary delays, councillors may be requested to determine applications before the statutory consultation period expires. In such instances the councillors will instruct the **director regeneration and development** to issue the decision notice providing that no further representations are received raising issues not considered in reaching the decision. If new issues are raised which have not been previously considered, the matter shall be referred back for councillor consideration with a revised report addressing the issues raised.

Applications delegated to the **director regeneration and development** will not be determined until the consultation period has expired.

A report on a policy matter should specify what consultation has been undertaken and summarise all representations received. Final decisions **will not** be taken until the expiry of the consultation period. A

recommended response to each representation should, where possible, be stated in the report.

Deferment

The committee should only defer a decision where there are clear planning reasons for doing so.

Where representations are received at the committee meeting which raise **relevant planning** issues which are not addressed in the officers' report, or cannot be answered by officers at the meeting, consideration of the application should be deferred until the next meeting.

Councillor attendance

It is important that the councillors' decision takes account of all material issues, not solely those contained in the officer's report, but also those which may be presented orally or otherwise at the meeting.

Any councillor absent from any part of the meeting during consideration of an application must not vote on that application.

This does not apply where a councillor is unable to attend a site visit, since a site visit is not a formal meeting. Issues arising from the visit must, in accordance with the site visit procedure, be presented when the application is put forward for formal consideration.

Committee site visits

Site visits must be justified in planning terms, and authorised by the committee only where there is a clear benefit to do so, for example where the impact of the proposed development is difficult to visualise, or where comments made by the applicant or

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Section II The Decision Making Process

objectors cannot be expressed adequately in writing.

The site visit is for fact finding and is not a formal committee meeting. No decision on the application can be made at a site visit and councillors should not indicate how they will deal with the application.

Site visits will be held in accordance with the agreed site visit procedure (Appendix IV).

Decisions contrary to the development plan, other relevant policy considerations, and/or officer recommendation

The town & country planning act 1990 requires that decisions should be taken in accordance with the local development plan unless material planning considerations indicate otherwise. Where the local development plan is out of date in respect of particular issues, regional planning guidance, or national planning guidance, will carry the greater status.

Applications which are not in accordance with the plan (departures) will be advertised in accordance with statutory requirements.

If a councillor wishes to move that a matter is dealt with contrary to the development plan and/or officer recommendation statutory plans or planning guidance, that councillor must identify:

- the material issues and reasons for their motion
- the reasons for refusal / or conditions specifically identified

It is the responsibility of the chair of the committee, advised by officers, to make sure that this is done.

It is the responsibility of the committee officer to ensure that the decision and reasons are recorded.

Councillors contemplating dealing with a matter contrary to the development plan and/or officer recommendations and/or other statutory plans or guidance, should be mindful of the following:

- possible appeal against the council's decision and who would present evidence on behalf of the council, where decisions are contrary to officer advice
- the financial implications for the council.

Section 106 of the town and country planning act 1990 (S.106 agreements)

The council will only enter into a S.106 agreement where the requirements of the agreement are necessary in order to enable the development to proceed in accordance with the relevant government advice or development plan policy.

The completed S.106 agreement will be a public document.

Any money received through a S.106 agreement will be placed in a separate account.

Council approval will be obtained for expenditure against each account in accordance with the terms and conditions of the agreement, and the council will produce an annual statement of expenditure against each account produced for public inspection.

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Section III – Administrative and Related Matters

Training

All new councillors of the planning applications committee will receive training in the planning system as soon as possible after appointment.

Councillors of other committees taking decisions on planning policy matters on a regular basis will also be encouraged to undertake such training.

Regular briefings will be provided as appropriate to keep councillors advised of changes by officers or consultants, to government policy, guidance or best practice.

Complaints

Complaints will be fully investigated in accordance with the council's agreed standards.

Monitoring

Regular reports will be submitted to the planning applications committee about performance in determining applications, against performance indicators, and to bring to councillors' attention a summary of the main issues in improving the efficiency and effectiveness of officers and the committee.

Appendix I

Planning applications committee

The terms of reference for the committee are set out in appendix 4 of the council's constitution. The devolved authority to officers was reviewed and agreed by the committee at its meeting on 2 July 2009.

A. Planning Applications

All applications will be determined by the Head of Planning unless it falls within one or more of the following categories:

(i) approval of all major* developments if there is one or more objection raising material planning issues or if the proposal would represent a serious departure from the development plan.

With the exception of the following:

all applications where there are no objections citing material planning issues, and/or would represent a serious departure from the approved development plan and approval is recommended.

(ii) All applications (other than major applications defined in 1 above) which are recommended for approval and

(a) subject to 2 or more objections from neighbours and/or other third parties citing material

planning issues, and/or
(b) subject to a petition signed by 50 or more local residents (identically worded letters will be treated as a petition) and/or
(c) would represent a significant departure to the approved development plan.

(iii) Applications submitted by the city council, relating to council owned property, excluding minor alterations to any property (such as replacement windows to the council's housing stock) or minor changes of use or applications where the recommendation is to approve and there are no material planning objections

(iv) Where a member of the city council requests, within 14 days of the publication of the weekly lists, and an appropriate planning justification is made, that the application be referred to the committee for decision.

(v) Applications submitted by a member of the city council, a member of staff employed in the planning service or who works in a professional capacity in a field closely related to the planning service) or their immediate family defined as husband / wife / partner / son / daughter / mother / father / brother / sister /and equivalent in-laws as either applicant or agent.

* major is defined by central government as applications for 10 or more dwellings, outline applications for residential development on sites over 0.5ha or offices, research, industrial, warehousing or retail development over 1,000 sq m or 1ha for outline applications.'

B. Enforcement

(i) To approve the service of an enforcement notice under Section 172

of the Town and Country Planning Act 1990 or section 38 of the Planning (Listed Buildings and Conservation Areas Act 1990).

C. Tree preservation orders

(i) Whether to confirm a tree preservation order served under devolved powers where there is an objection or objections to that order.

D. Other

(i) Planning applications or other planning matters which the Director regeneration and development considers appropriate to be referred to the Planning Applications Committee for determination.

Appendix II – Code of Professional
Conduct – No change

Appendix III Planning code of conduct, October 2007 |

Planning applications committee: public speaking Public questions

The council's constitution allows members of the public to ask a question at the start of the committee meeting provided that the question is about a matter which relates to the committee and that the question complies with the criteria as set out in rule 10, Appendix 1 of the constitution.

The member of the public wishing to ask a question must ensure that a copy of the question is provided to the committee officer in writing by 10.00 a.m. on the day before the committee meeting.

Making representations on planning applications

Persons or parties wishing to make representations on planning proposals will be encouraged to make their comments in writing, so they can be incorporated in the officer's report, and considered as part of the appraisal of the application proposals.

The chair of the committee will be allowed to exercise discretion and in exceptional circumstances will allow members of the public to speak who have not submitted written representations in advance.

Role of applicant and objectors

Where an objector who has previously submitted written comments wishes to speak the applicant or agent, if in attendance will be given the opportunity to speak in response to the points raised by the objector.

Where there are no objections and the

application or policy matter is recommended for approval and the relevant committee is minded to approve, the applicant or agent will not be invited to address the committee. Where the application is recommended for refusal the ~~applicant~~ or agent will be entitled to address the committee for 3 minutes in response to the report.

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Applicants must ensure that sufficient information is provided with the application to enable the councillors to make an informed decision.

Making a presentation

The city council will inform the applicant, neighbours and objectors at least three working days before the committee meeting when the application is to be considered.

Persons and parties, including applicant and agents, wishing to speak at the planning applications committee must make their request to the committee officer by 10.00am on the working day before the meeting. In the opening part of the committee meeting the chair will ask members of the public to indicate if they wish to speak and if so, on what item.

Where objectors or supporters wish to speak, the chair will ask whether the applicant or their agent also wishes to address the meeting. Only those objectors or ~~supporters who have~~ submitted written representations will be allowed to speak, unless in exceptional circumstances, the chair has chosen to exercise discretion. Members of the public who have submitted written submissions in advance will be allowed to appoint an advocate to speak on their behalf if they so wish.

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The chair will consider changing the order of the agenda where there is public interest to avoid numbers of objectors having to wait.

The chair will advise those speaking that they ~~should:~~

- speak for up to three minutes
- direct their comments to planning issues

- make their points concisely

The chair may allow a longer period for representations to be made in complex cases.

Any speaker may be stopped by the chair where he or she:

- reports comments already made
- introduces non planning issues
- makes defamatory comments about councillors, officers, or any other individual or party involved in the matter under discussion
- has spoken for three minutes.

Where several objectors have expressed the wish to speak, the chair will request the objectors to nominate a spokesperson, and other objectors to add any points which have not already been made.

The procedure for speaking will ~~be:~~

- Presentation by a planning officer
- Objectors / supporters
- Applicant / agent
- Supplementary presentation by the planning officer on the issues ~~rose~~
- Councillor decision

Where councillors wish clarification of issues, with the chair's permission, questions may be put to the applicant / agent and / or objectors and / or others.

An application should be deferred if new material planning evidence is presented at the committee meeting which is not addressed in the officer's report and cannot be answered satisfactorily at the meeting in the view of officers or councillors.

Planning applications committee: site visit procedure

This procedure note sets out the role of site visits by the planning applications committee and the procedure to be followed.

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Appendix IV Planning

Selection of site visits

The decision of the planning applications committee to hold a site visit is made by members of the committee, sometimes on the recommendation of the Head of Planning Services.

A site visit enables councillors to ensure that they have sufficient information about the effects of proposed development. Site visits should be held selectively, where there is a clear substantial benefit, such as where the impact of a particular scheme is difficult to judge from the submitted material, or where the concerns expressed by objectors cannot be adequately expressed in writing.

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Site visits are fact finding meetings and are ~~not formal~~ committee meetings. No recommendations are made at the site visit and no decisions are made.

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Attendance

All members of the planning applications committee will be invited to attend. Ward councillors will also be ~~notified~~ and are welcome to attend if they so choose. The applicants' agent will be notified of the proposed site visit and requested to give permission for access to the land and to inform them of the fact finding nature of the visit and the general procedure.

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The site visit procedure will be:
a) The chair welcomes councillors and others attending indicating

- that the purpose of the site visit is fact finding;
- that the application will not be determined at the site visit, but will be decided at the formal meeting of the Planning Applications Committee;
- the procedure of the site visit.

b) The chair should endeavour to ensure that explanations and representations from members of the public are given to the committee collectively. Members should be mindful of their obligations to keep an open mind and not to reveal bias when hearing such representations and when determining the application.

c) The committee officer will declare and record apologies for absence.

d) The planning officer will point out the key features of the application site.

e) Comments of other officers as appropriate.

f) Inspection.

g) Councillors' questions to the planning officer

h) Chair closes the inspection.

At the site meeting councillors should ensure that they do not express opinions as to their likely decision. A summary of the issues raised at the site meeting will be made and included on the application file and will be referred to when the application is formally considered.