

Foreword

The original concerns which brought about the creation of the 'Nolan Committee' (the Committee on Standards in Public Life) were to do with Central Government, but its Third Report dealt with Local Government. It emphasises what it is to be hoped everyone in Local Government knew already, that there is a need for propriety in our dealings and for that propriety to be demonstrated. The Report recognised that planning is a sensitive area of Local Government work where considerable returns can hinge on individual planning decisions.

The Council's Regulatory Planning and Control Committee has taken the opportunity to set down its Code of Practice for dealing with planning applications so that our procedures for both Members and Council Officers can be clear to all. The Committee deals with planning applications for development which can often be highly controversial. We believe that our Code of Practice is fair both to applicants and to the people we represent so that we can make impartial decisions in the interests of the community at large.

**Councillor John Williams
Leader of the Council**

**Councillor Ken Armstrong
Chair of the Regulatory
Planning and Control
Committee**

May 2005

1. Basic Principles

- 1.1 The basis of the planning system is the consideration of development proposals against the wider public interest.
- 1.2 The successful operation of the planning system relies on ensuring that officers and Members act in a way which is not only fair but is clearly seen to be so.
- 1.3 The Derbyshire County Council Code of Conduct for Members ("The Code of Conduct") adopts provisions of the model Code in Schedule 1 of the Local Authorities (Model Code of Conduct) (England) Order 2001. It governs both declaration of interest and expected behaviour by Councillors generally. It must be followed scrupulously and Councillors should review their situation regularly.
- 1.4 Members have a particular duty to represent their constituents, but also an overriding duty to the wider community. They should act in the general public interest in relation to planning matters. However, there is no reason why a local Member should not participate in the decision making process for a particular planning application, provided they have abided by this Code.
- 1.5 Planning applications submitted by the County Council for its own development will be treated in the same way as those by others in terms of the assessment of the proposal in relation to the policies of the development plan and other material planning considerations.
- 1.6 Should an application be submitted by or on behalf of anyone involved in the planning process, or a relative (as defined by the Derbyshire County Council Code of Practice) or friend, the Member or officer concerned will, as soon as reasonably practicable, inform both the Director of Environmental Services and the Council's Monitoring Officer and take no part in processing or determining the application.
- 1.7 The role of planning officers is to advise and assist Members in matters of planning policy and their determination of planning applications by providing impartial and professional advice. They will ensure that all the necessary information for a decision to be made is provided together with a clear and accurate analysis on the issues including setting the application against the Development Plan policies and all other material considerations. All reports to Members will contain a clear recommendation.

- 1.8 The County Council endorses the Royal Town Planning Institute (RTPI) Code of Conduct and in particular that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. All officers in the Authority advising on planning matters are expected to act in accordance with the RTPI Code of Practice whether or not they are RTPI members. Members of the Council should respect those professional responsibilities at all times.
- 1.9 Members may raise with the relevant officers any points which they consider to be of relevance to the merits of a planning matter which the County Council is to determine. However, members should not otherwise seek to influence officers regarding particular officer recommendations on planning matters.
- 1.10 A Scheme of Delegation exists which enables uncontroversial planning applications, submissions and other minor matters to be determined by the Director of Environmental Services in consultation with the Chair and Vice Chair of the Regulatory Planning and Control Committee. The basis of delegation is that the proposal accords with the policies of the development plan and no valid planning objections have been received from the district/borough or town/parish councils or as a result of publicity within the appropriate period.

2 Training

- 2.1 Training will be made available for all Members of the County Council in June each year.
- 2.2 All Members serving on the Regulatory - Planning and Control Committee shall have received training in planning principles prior to serving on the Committee
- 2.3 Only Members who have received training in the principles of planning shall act as substitute members on the Committee.

3 Availability of Information relating to Planning Applications

- 3.1 All planning application receive publicity in accordance with the Council's adopted practice and will vary depending on the type of application and its likely impact. Whilst the Council does not impose rigid time limit for the receipt of representations in order for the Regulatory - Planning and Control Committee to be advised of the relevance of representations those submitted later than three working days before the Committee meeting will not be taken into account.
- 3.2 All publicity relating to planning applications will be accompanied by information on how to make representations to the County Council.
- 3.3 Local Member(s) will be informed of planning applications that fall to the County Council to be determined as soon as practicable following receipt of the application.
- 3.4 Copies of planning applications, subsequent amendments, relevant correspondence from consultees, planning decisions, conditions or reasons for refusal and Section 106 Agreements will be made available for public inspection at The Environmental Services Department, Shand House, Dale Road South, Matlock during office hours.

4 Lobbying

- 4.1 All members of the Regulatory - Planning and Control Committee shall avoid expressing an opinion which may indicate having reached a conclusion or otherwise committing the Authority on a planning application until all the relevant information, evidence and arguments have been put before them in the Director of Environmental Services' report.
- 4.2 Local Members who are also members of the Committee may participate in the decision making, provided they have abided by the provisions of this Code of Practice. Where they feel it is appropriate to do so, they may express support for a particular body of opinion in advance of the Committee, provided it is clear that they will not reach a final view on the proposal until such time as all the relevant information, evidence and arguments have been put before them. Relevant guidance is contained in the Standards Board for England guidance note "Lobby Groups, Dual-hatted Members and the Code of Conduct, September 2004.

- 4.3 Any member of the Committee who expresses publicly a final view on a planning application prior to the Committee meeting at which a decision is to be taken will declare this if they attend the meeting, as a prejudicial interest and withdraw from the meeting room for that particular item (see "Declaration of Interest").
- 4.4 Members of the Committee will not organise support or opposition for a proposal or lobby other Members (other than when addressing the Committee).
- 4.5 Letters received by Members pertinent to a proposal may be passed to the Director of Environmental Services for consideration in the processing of the proposal and the drafting of a report to the Committee.
- 4.6 Any Member of the Committee who is subject to significant lobbying in respect of an application by telephone, e-mail, fax or any other means should briefly record the circumstances and content of such lobbying and inform the Director of Environmental Services accordingly by e-mail or letter.
- 4.7 Local Members who are not members of the Committee may give support to a particular body of opinion in advance of the Committee meeting at which the proposal is to be considered. However, to prevent such support from amounting to a prejudicial interest, they must wait until the Committee meeting when all the evidence is heard before reaching a final view.
- 4.8 Members should also take account of the contents of the Code of Conduct (see Section 6 below). In accordance with the Code of Conduct, Members should always take care to avoid placing themselves in a position that could lead to the public thinking they are seeking preferential treatment for themselves, their friends or relatives or any firm or body with which they are personally connected.
- 4.9 At each meeting of the Regulatory Planning and Control Committee and prior to the consideration of the Report of the Director of Environmental Services any Member of the Committee who has been subject to significant lobbying on any application on the agenda will declare this.

5 Discussions Prior to Determination

- 5.1 Pre-application meetings between potential applicants and Council representatives are encouraged by the County Council, but to avoid them being misunderstood they will be held at officer level.
- 5.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision.
- 5.3 Where a particular planning application gives rise to widespread public concern the Chair of the Regulatory - Planning and Control Committee in consultation with the Director of Environmental Services may consider it appropriate to arrange a meeting, which will be open to the public, to which the applicants will be invited to outline their proposals and objectors to express their concerns. Such meetings would also be attended by appropriate officers and notes of the meeting taken. All Members of the Committee together with the local Member(s) would be invited to attend. The Chair of the meeting will make it clear to the meeting that Members are in attendance to obtain information not to discuss the issues which arise.

6 Declaration of Interest

- 6.1 The relevant requirements relating to declaration of interest under the Code of Conduct apply to Members attending meetings of the Regulatory – Planning and Control Committee as well as other Committees of the Council. They apply to a Councillor who is not a Member of the Committee but who attends a meeting, as well as to Members and substitute Members serving of the Committee. The provisions of the Code of Practice which are of immediate relevance for this are reproduced at the end of this Code of Practice, for easy of reference.
- 6.2 As indicated under “Lobbying”, any member of the Committee who expresses a final view on a planning application prior to the Committee meeting at which a decision is to be taken must declare this as a prejudicial interest and withdraw from the meeting room for that particular agenda item.
- 6.3 Membership of a District, Parish or Town Council which has expressed a view on an application does not by itself give rise to a prejudicial interest provided that the Member retains an impartial view. Relevant guidance is contained in the Standards Board for England guidance note “Lobby Groups, DualHatted Members and the Code of Conduct”, September 2004.

6.4 The County Council's Monitoring Officer will give advice on whether an interest should be declared in cases of doubt.

7 Site Visits

7.1 Site visits in relation to any current applications for planning permission may be held with the aim of assisting members to acquire a clear understanding of the nature of the development proposed, its location, and potential impact.

7.2 The Director of Environmental Services, in consultation with the Chair and/or Vice Chair, should normally determine whether a site visit should be arranged for an application on the basis of:

- the nature of the proposal, its location, its potential impact and any additional information which committee would gain from the site visit;
- the representations which have been received;
- the proposed recommendation of the Director of Environmental Services on the Application (applications recommended for refusal would normally be subject to site visit);
- any request made by a Local Member in response to consultation.

7.3 Normally any site visit would, if practicable, be arranged to take place on the day of the Committee meeting to consider the application. The following would be notified of any site visit that is arranged:

- Applicant(s)
- District/Borough Council(s)
- Parish Council(s)
- Local Member(s)
- Members of the public and others those who have made making representations in writing to the Council in support or in objection ("those making representations")

7.4 In line with the aim of the site visit, those present would only speak on invitation of the Chair or other Members on points of clarification on the application or representations made. However, in the interests of balance at least one supporter and at least one objector from those who have made representations will normally be invited to point out any significant physical or geographical or other physical features that may relate to the representations.

8 Taking the Decision

- 8.1 Members of the Regulatory - Planning and Control Committee must be free to vote as they consider appropriate on planning matters. Whilst Members are free to discuss their opinions on planning applications at political group meetings, decisions should not be made on how to vote on issues prior to the Committee meetings.
- 8.2 When the report item on a matter to be determined by the Committee becomes available, (normally five working days before the next meeting), applicants, district/borough councils, parish councils, local member(s) and those making representations will be notified of (1) the Committee meeting arrangements and (2) the nature of the relevant officer recommendation and asked to inform the Environmental Services Department no later than the two working days before the meeting if they wish to make a short speech at the Committee meeting or to send a representative to do so. Those who are to make speeches will be asked to arrive 15 minutes before the meeting to assist identification of speakers and briefing by the Clerk to the Committee
- 8.3 All applications submitted to the Regulatory - Planning and Control Committee for determination will have a full written report from officers including a reasoned assessment of the proposal and a justified recommendation.
- 8.4 Where an application is recommended for refusal the reasons will be set out in full in the officers report.
- 8.5 Items where there are representations to be heard would normally be brought forward in the agenda by the Chair.
- 8.6 An officer representing the Director of Environmental Services would outline the proposal and main issues together with any updating of the report. Members of the Committee could then ask any questions of the officer.
- 8.7 The Chair would then invite speakers in the following order:
 - Local Member
 - District/Borough Council
 - Parish Council
 - Action Groups or other organisations
 - Individual objectors
 - Applicants
 - Supporters

- 8.8 As far as practicable each speaker would be allowed up to 3 minutes speaking time.
- 8.9 The speaker would not be permitted to ask questions or enter into debate with members or officers.
- 8.10 Following each representation Members of the Committee may ask the officer any questions about any matters arising from that representation The officers shall then endeavour to respond immediately to such questions as far as is practicable
- 8.11 Following the completion of representations and any questions and officers' responses, arising from them the officers may then provide any further comments or information about the matter as they may consider appropriate in the light of such representations, questions and responses.
- 8.12 Immediately prior to any motion being voted on for a final determination of any matter before the Committee, the Chair shall ask the officers to indicate whether or not they consider that further consideration of the matter in Committee should be deferred to a subsequent meeting (this should ensure that if new points of material relevance to the matter become apparent at the meeting there will be an opportunity to consider whether the matter should be deferred to enable them to be further investigated or examined).
- 8.13 Subject to any identification by the officers of a matter being suitable for deferral as provided for above, the Committee shall normally proceed to consider and to seek to determine the matter at the same meeting.
- 8.14 The Chair may request clarification from officers on any relevant planning or legal issues relating to the matter at any time prior to a motion being voted on.
- 8.15 The Chair shall have full discretion (both in advance of and during the meeting but, as far as practicable, following consultation with the County Secretary or his legal officer attending the meeting) to prescribe for any particular matter any changes to the usual participation procedure described above as may appear to the Chair to be necessary at any time for the fair or effective conduct of the business of the meeting,.
- 8.16 From time to time the majority of members of the Regulatory - Planning and Control Committee may disagree with the

professional advice given by the Director of Environmental Services. In such cases relevant planning reasons for their decision made contrary to the officers recommendation should be clearly stated for recording in the minutes of the meeting.

8.17 Decisions on applications made contrary to officer recommendations shall be supported by clear planning reasons.

9. Monitoring and Quality of Development

9.1 The Committee will make two tours of inspection each year to enable members of the Regulatory Planning and Control Committee to observe the quality of development under planning permissions granted. This will include waste management facilities, working mineral operations and the County Council's own development. These site visits will be agreed with the Chair of the Committee in advance.

9.2 For each site visited for observation purposes a briefing note will be prepared and any necessary permission to gain access to private land will be obtained.

10. Planning Obligations

10.1 Officers will negotiate with developers with regard to Legal agreements associated with planning permissions.

10.2 Reports to the Regulatory Planning and Control Committee will include Heads of Terms for any proposed Agreements.

10.3 Copies of any concluded Legal Agreements will be available for public inspection both at County Hall and in conjunction with the statutory planning registers unless there is a need to respect confidentiality or commercial information.

10.4 Legal Agreements will be restricted to such relevant matters as are described in Government Circulars or other advice as interpreted by the most recent case law.

11 Complaints

11.1 Any issues or concerns arising from this Code of Practice can be raised with the County Secretary or the Director of Environmental Services. The Council also has a formal complaints system in operation which can be used if necessary and enquiries should be addressed to the County Secretary.

12 Availability of the Code of Practice

12.1 Copies of the Code of Practice will be available for inspection at the reception office of the Chief Executive's and the Environmental Services Departments, County Hall, Matlock or can be supplied free of charge on request. It is also available on the County Derbyshire Council Web site.

ANNEX to Code of Practice for the Determination of Planning Applications and Related Matters (2005)

FROM DERBYSHIRE COUNTY COUNCIL CODE OF CONDUCT FOR MEMBERS:-

PART 2

INTERESTS

Personal Interests

8. (1) A member must regard himself or herself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend-
- (a) or any employment or business carried on by such persons;
 - (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.
- (2) In this paragraph –
- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons;
 - (b) and "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

Disclosure of Personal Interests

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- (2) *[not reproduced - concerns executive decisions only]*

Prejudicial Interests

10. (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is 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.
- (2) A member may regard himself or herself as not having a prejudicial interest in a matter if that matter relates to –
- (a) another relevant authority of which he or she is a member;
 - (b) another public authority in which he or she holds a position of general control or management;
 - (c) a body to which he or she has been appointed or nominated by the authority as its representative;
 - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he or she does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
 - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
 - (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
 - (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.
11. *[Not reproduced -relates to involvement in consideration of matters at meetings for overview and scrutiny only]*

Participation in Relation to Disclosed Interests

12. (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –
- (a) withdraw from the room or chamber where a meeting is being held whenever it

becomes apparent that the matter is being considered at that meeting, unless he or she has obtained a dispensation from the authority's standard's committee;

(b) *[not reproduced -concerns executive functions only]* ; and

(c) not seek improperly to influence a decision about that matter.

(2) *[Not reproduced - relates to participation in meetings of the authority's - overview and scrutiny committees and joint or area committees only]*

13. For the purposes of this Part, "meeting" means any meeting of -

(a) the authority;

(b) the executive of the authority; or

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees.