

CODE OF CONDUCT ON PLANNING MATTERS

FOR COUNCILLORS AND OFFICERS

1. INTRODUCTION

- 1.1 This Code of Conduct (“the Planning Code”) is in addition to the Members’ Code of Conduct adopted by the Council on 5 July 2012 (“the Code of Conduct”). The Planning Code is set out in the form of a series of headings with a brief outline of the issues involved, followed by best practice advice and guidance.
- 1.2 Unless otherwise stated or the context otherwise requires, references in the Planning Code to “the Council” are to Worcestershire County Council, to “the Committee” or “the Planning Committee” are to the Planning and Regulatory Committee or such other member body for the time being carrying out the functions presently assigned to the Planning and Regulatory Committee, and to “P&R Councillors” are to Councillors who are members of the Planning and Regulatory Committee.

2. LOBBYING

- 2.1 Lobbying, or seeking to influence a decision, is a normal part of the political process. However, it can lead to impartiality being brought into question. The law now provides that a decision-maker is not to be taken to have a closed mind just because he or she had previously done anything relevant to a decision that, directly or indirectly, indicated what view he or she took, or would or might take, in relation to a matter. Recent judicial decisions have also distinguished between the situation where a decision-maker has a predisposition to take a particular view of a matter (i.e. where he or she is open to persuasion otherwise) and that where the decision-maker has a predetermination to take that view (and so cannot be persuaded otherwise). However, P&R Councillors should be very cautious about expressing strong views about a matter prior to its coming before the Committee for determination. Problems could arise if P&R Councillors give a strong indication or impression of support or opposition to a development proposal or particular planning application, or declare their voting intention, before a decision is to be taken. To do so without all relevant information and views may well be unfair and prejudicial and could lead to legal challenge. Lobbying may take place by professional agents as well as unrepresented applicants/landowners.
- 2.2 In general terms the following best practice points apply to each of those situations:
- Care should be taken by any member involved in the decision-making process in expressing a clear opinion on any planning proposal prior to its determination by the Committee. In order to ensure the integrity and probity of the Committee's decisions it is clearly preferable that P&R Councillors should indicate that they will keep an open mind until all the facts are known and they have heard all sides of the argument. Before this stage it is better for them to restrict themselves to listening to points of view and directing those who are lobbying to write to the Council so that their representations can be included in the Officer’s report.

- P&R Councillors who find themselves in a situation which is developing into lobbying are advised to explain that whilst they can listen to what is said they propose to keep an open mind and not to express a firm point of view or an intention to vote one way or another.
- If P&R Councillors choose to visit sites prior to consideration of a planning proposal by the Committee they should also have regard to the principles outlined above and in order to ensure openness and fairness they should consider whether to visit a neighbouring objector's property also. It is advisable not to accept invitations to view sites prior to a formal site inspection by the Committee, as this could be used by an agent or applicant as an opportunity to exert undue pressure.
- P&R Councillors should not negotiate detailed planning matters with lobbyists.
- Notwithstanding that the P&R Councillor holds a strong view about an application, it is perfectly acceptable for a P&R Councillor representing the electoral division in which the application lies (the local Councillor) to address the Planning Committee (though not to take part in the debate or vote), but it is inappropriate for P&R Councillors to organise support or opposition or to lobby other P&R Councillors informally.
- P&R Councillors should ensure that any response they may make to views expressed by political parties of which they are members should not lead to a public perception of predetermination of any matter.
- P&R Councillors should not act as advocates or agents for planning policy matters to be determined by the Council.
- P&R Councillors should not put pressure on officers for a particular recommendation. The recommendation and the decision are separate parts of the same process which should be justified by the report and the debate respectively.

3. APPLICATION DISCUSSIONS

3.1 Local planning authorities are encouraged to enter into pre-application discussions with potential applicants by, amongst others, the Local Government Association and the National Planning Forum. In addition, negotiations and discussions are likely to be ongoing after an application has been submitted. Such discussions can often be interpreted by the public, and especially objectors to a planning proposal, as prejudicing the planning decision-making process. In order to avoid or at least allay such perceptions, application discussions should take place within clear parameters as follows:-

- Pre-application discussions should normally be conducted at officer level; where confidentiality is requested this will be respected at this stage.
- It should always be made clear at the outset that any discussions are on a without prejudice basis and that where P&R Councillors are involved any views expressed by them are personal and provisional.
- It should always be stated that advice given by planning officers is subject to review at a more senior level and in the light of any additional relevant information that might come forward.
- Advice given should be consistent and based upon the Development Plan, Government planning policy statements and any relevant material considerations.
- A written note should be made of any application discussions and placed upon the relevant file.
- Two or more officers shall attend potentially contentious discussions. A follow-up letter should be sent, at least where documentary material has been left with the Council.
- Care must be taken to ensure advice is impartial and if requested it will be confirmed in writing.

4. DECLARATIONS OF INTEREST

4.1. The provisions of the Code of Conduct in respect of interests apply to all Councillors of Worcestershire County Council, including P&R Councillors, and must be observed. For the sake of clarity, Part 2 of the Code of Conduct and the Regulations relating to them are attached as an appendix.

4.2 Further guidance on interests may be obtained from the Council's Monitoring Officer.

4.3 Interests of Officers

- Care should always be taken to avoid any suspicion that an Officer recommendation may have been influenced by improper motives.
- Any Officer who has an interest in a planning proposal which, in the case of a Councillor, would fall to be declared under the Code of Conduct should immediately inform his or her Head of Service or Director who, in consultation as necessary with the Monitoring Officer, will determine whether the Officer should take any further role in relation to the matter.

5. DISTRICT AND PARISH COUNCIL MEMBERSHIP

5.1 Some P&R Councillors will be members of parish/ town or district councils who are consulted on planning applications. Whilst the comments of these councils should concentrate on local issues, P&R Councillors who are also members of such Councils can come under pressure to indicate their support or objection for a particular proposal. It is quite conceivable that a P&R Councillor in this position could end up voting in a different way when all the relevant information is made available in the Officer report to the Planning Committee. In these circumstances the following advice is given:

- Consistently with the advice given in Section 2 about lobbying, P&R Councillors who are also members of parish/town councils should continue to listen and give assistance if necessary when planning applications are being considered by those councils but should avoid giving a strong indication of support or objection. P&R Councillors who are also members of district councils should follow a similar procedure but may also seek advice from district council officers.
- If wished P&R Councillors can assure the parish or town council that they will ensure that the Council's planning officers and relevant P&R Councillors are aware of the council's views and reasons for them.
- It is recommended that P&R Councillors should clearly explain to parish or town councils that they have not decided upon their final voting intentions until all the relevant information is presented to them.

6. COMMITTEE PROCEDURES AND CONDUCT OF MEETINGS

6.1 The procedures governing the conduct of meetings of the Council's member bodies are already set out in the Council's Constitution. However, the general public who attend these meetings will usually not be familiar with these procedures and it is therefore important that the impression given is always one of an orderly meeting, where it is clear that decisions are being made on matters which are relevant and that P&R Councillors and Officers fully understand the reasoning. The following best practice guidelines will assist in this aim.

- Chairman's Briefings should whenever possible be held after the agenda has been set and Officer's recommendations made; the Chairman of the Committee will consider in consultation with the Vice-Chairman and the Council's Planning and Legal and Democratic Services Officers the relevant people to make presentations (in accordance with the Scheme of Public Participation) and whether a site visit should be held before the matter comes to Committee.

- A contact officer will be named in each report to the Committee and P&R Councillors may speak to the officer named about the report prior to the meeting at which the application referred to is to be considered.
- A legal officer shall be present at Committee meetings where appropriate.
- Structured reports to Committee for planning applications shall set out all relevant issues, including in particular development plan policies, site or related history, and other material considerations. Reports shall contain a clear recommendation with an explanation of the reasons for it.
- P&R Councillors may view letters of representation prior to the meeting of the Committee.
- Verbal updating of the report should be carefully minuted particularly when this leads to a change in recommendation.
- Relevant Development Plan policies and material considerations which explain the recommendations must be clearly set out in the report.
- Where decisions are to be delegated to officers or officers in conjunction with specified P&R Councillors, this should be clearly stated and the arrangements detailed in the minutes.
- Terms of reference of any Section 106 or other Agreements required to be entered into by applicants/landowners concerned must be explained in the report and recorded in the minutes.
- P&R Councillors should vote on a proposal or application before the Committee only if they have been present for the whole of the presentation and discussion relating to the proposal or application.

7. DECISIONS CONTRARY TO OFFICER RECOMMENDATION

- 7.1 When decisions are made contrary to Officer recommendation the Committee shall make clear the reasons for making such a decision at the time. However, it is preferable in these circumstances for the Committee either to defer a formal decision to enable appropriate advice on the terms of those reasons to be sought from relevant Officers (or from an independent source if appropriate) or to delegate the formulation of detailed reasons to the Head of Economic Development and Planning in consultation with the Chairman and Vice-Chairman of the Committee and the Head of Legal and Democratic Services as necessary. The reasons shall be minuted at the appropriate meeting of the Committee, thus ensuring that all decisions are supported by a written explanation.
- Where a P&R Councillor is minded to move a recommendation which is contrary to the Officer recommendation, in the case of a refusal, clear planning reasons should be given and in the case of approval, an indication of the conditions that should be imposed. If this results in a decision contrary to the Officer recommendation then the advice in the previous paragraph shall be followed.

8. SITE VISITS

- 8.1 Site visits by the Committee can be helpful in reaching a decision, particularly in respect of large scale and complex planning applications. Visits will always be held in relation to major new proposals for mineral workings or waste treatment/disposal and in other cases where the character or visual impact of the development cannot be readily appreciated from an inspection of the submitted plans and illustrative photographs and an appreciation of the wider setting, surroundings and/or access to the site is essential.
- 8.2 Apart from these arrangements in respect of 'live' applications, visits will take place annually to a selection of application sites approved by the Committee where development has been completed. These annual visits will enable the Committee to assess the actual impact of their decisions and to inform their future considerations.

- 8.3 The Chairman and Vice-Chairman will determine at the pre-Committee briefing which sites to inspect from the applications due to be considered at the next meeting based on the above criteria. P&R Councillors and local Councillors concerned about particular applications within their Division should make known their requests for site visits to the Chairman and/or Vice Chairman as early as possible. They should not wait until the relevant Committee meeting itself as this may delay the determination of that application for at least one Committee cycle. Requests for visits should be based on one of the criteria set out above.
- 8.4 Any P&R Councillor may exceptionally request a site visit at the meeting but the reasons relating to the above criteria must be stated and will be minuted. Such site visits will only be agreed if a majority vote decides in favour.
- 8.5 Only P&R Councillors and the local Councillor(s) may take part together with supporting officers. Officers may wish to explain matters on route and P&R Councillors are therefore encouraged to travel to sites on the coach provided, rather than independently. This will also enable the inspection timetable to be adhered to where more than one site is to be visited.
- 8.6 The applicant will be invited to attend as a matter of courtesy, to answer any factual questions and to provide P&R Councillors and local Councillor(s) with health and safety guidance.
- 8.7 Representations will not be heard from objectors, applicants or members of the public who may be present and officers will advise all relevant parties of this. Should attempts be made to make representations, P&R Councillors will be advised to move away and disregard anything they may have heard. (This is to ensure that any representations are properly made in advance in writing or verbally at Committee under the Scheme of Public Participation. In this way, they may be properly heard by all P&R Councillors, including those not present at the site inspection, responded to and recorded). No hospitality will be accepted.

Conduct of Site Inspections

- The representative of the Head of Economic Development and Planning will open the visit and advise P&R Councillors of purpose, conduct and material planning considerations.
- Visits will be undertaken in a formal and professional manner. They are part of the formal development control process and take place in public view. Conduct on the site inspection may therefore affect the public perception of the County Council as a whole.
- P&R Councillors should stay together as a group **at all times**. This is to ensure (i) the health and safety of everyone on the visit (which is particularly important with operational minerals and waste sites that may have intrinsic hazards) and (ii) that P&R Councillors are not given conflicting information to that provided by officers.
- Officers will highlight issues relevant to the site visit. All questions should be directed through the lead planning officer on the visit. The officer may then seek clarification if necessary from the representative of the applicant. A formal record of the visit is taken and officers need to be clear about what questions are being asked. It is important that all members of the Committee who attend the site visit are present to hear the question and answer session to ensure that everyone receives the same information. P&R Councillors should not seek clarification individually from officers or representatives of the applicant. P&R Councillors should refrain from holding informal sub-group discussions or answering questions on behalf of the officers.

- There will be no debate regarding the merits of the application and P&R Councillors should refrain from making observations or statements during the site inspection.
- Local Councillors will be asked to highlight local issues relevant to the site visit but not to make formal representations.
- P&R Councillors should refrain from smoking or using mobile phones on site.
- The Chairman or Vice-Chairman will end the visit and all P&R Councillors will leave the site at the same time.

9. DELEGATION TO OFFICERS

- 9.1 In recognition of the statutory time constraints in determining applications a protocol for delegation to Officers has been adopted. This covers approval of non-controversial proposals for County Council developments and other minor non-controversial proposals, including details required to be approved by conditions of existing permissions.

10. CONDUCT OF OFFICERS

- 10.1 Officers are subject to the Officers' Code of Conduct (Appendix 11 to the Council's Constitution).
- 10.2 Officers who are Chartered Town Planners are in addition guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. This Code obliges RTPI members to give professional and independent recommendations.
- Planning Officers who work closely with P&R Councillors have to ensure that their professional judgement is not compromised by the nature of their professional relationship with Councillors.

11. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS AND COUNCIL DEVELOPMENT

- 11.1 The advice in this Section applies both to planning applications and Development Plan policy matters.
- Serving Councillors and Officers should never act as agents for people pursuing a planning matter for which the Council is the local planning authority. Should they submit their own proposals to the Council they should take appropriate action pursuant to section 4 of the Planning Code/Part 2 of the Code of Conduct.
 - Such proposals and the fact that a declaration of interest has been made should be identified on the relevant planning files.
 - Development proposals by the Council are to be treated in the same way as those by private developers particularly in relation to Officers' advice.
 - Where a Council development is being considered Councillors who sit on both the Member Body promoting the development and the Planning Committee should take such action as the circumstances dictate in accordance with Section 4 of the Planning Code/Part 2 of the Code of Conduct prior to or when the matter is considered by the Committee.

12. DEALING WITH THE MEDIA

- 12.1 The Council has a Communications Unit which can provide assistance to both Officers and Councillors in their dealings with the Media. However, there may still be direct contact and pressure from the Media. P&R Councillors and Officers, when commenting on planning matters, should:
- Have regard to the points outlined in the Section on Lobbying and this Planning Code in general.
 - Make clear that they will retain an open mind until such time as all available data is available and this is discussed by the Committee.

- Make clear that any views expressed are personal and not offered on behalf of the Council, unless they are the authorised spokesperson on a particular matter.

13. REVIEW AND MONITORING

13.1 The effectiveness of this Code will be monitored in the following ways:

- Any outcome of the consideration of complaints made under the Council's corporate representations procedure, or by the Ombudsman where he has decided to investigate, will be reported as appropriate to the Committee.
- There will be regular monitoring of planning files by the proper officer to ensure complete and accurate record keeping.

**EXTRACT FROM WORCESTERSHIRE COUNTY COUNCIL
CODE OF CONDUCT FOR MEMBERS**

Interests

Disclosable Pecuniary Interests (“DPI”)

9. (1) You will have a Disclosable Pecuniary Interest (“DPI”) under this Code if:-
- (a) such interest meets the definition prescribed by Regulations as amended from time to time and set out in Appendix 2 to this Code; and
 - (b) it is either an interest of yourself or it is an interest of :-
 - (i) your spouse or civil partner;
 - (ii) a person with whom you are living as husband and wife: or
 - (iii) a person with whom you are living as if you were civil partners;
- and you are aware that the other person has the interest.

Registration of DPIs

10. (1) You must within 28 days of becoming a member of the authority or being re-elected notify the Monitoring Officer in writing of any DPI which you hold at the time notification is given.
- (2) You must within 28 days of becoming aware of any new DPI, or changes to existing DPIs, notify the Monitoring Officer in writing.

Other Disclosable Interests

11. (1) You will have a Disclosable Interest in any matter if you are aware that you or a member of your family or person or organisation with whom you are associated have:-
- (a) a pecuniary interest in the matter under discussion which is not de minimis; or
 - (b) a close connection with the matter under discussion.
- (2) If you are a member of another local authority, or public body, or you have been appointed as the authority’s representative on an outside body, you do not have a Disclosable Interest unless a member of the public knowing the circumstances would reasonably regard membership of the body concerned as being likely to prejudice your judgment of what is in the public interest.

Disclosure of Interests

12.(1) DPIs: formal meetings

If you are present at a meeting and you have a DPI then you must:

- (a) disclose the nature and existence of the interest;
- (b) leave the meeting (including the meeting room and public gallery) and take no part in the discussion and
- (c) if the interest has not already been recorded notify the Monitoring Office of the interest within 28 days beginning with the date of the meeting.

(2) DPIs: informal meetings

If you have a DPI you must not participate in informal meetings or briefings and site visits and must disclose the DPI in any correspondence with the Council.

(3) Single Member Decisions

If when participating in single member decision making you have a DPI affecting the matter being decided then you may take no steps other than asking for the matter to be decided in some other manner.

(4) Other Disclosable Interests

If you are present at a meeting and you have an Other Disclosable Interest then you must:

- (a) disclose the nature and existence of the interest; and
- (b) if the interest:

- i affects your pecuniary interests or relates to the determination of a planning or regulatory matter; and

- ii is one which a member of the public knowing the circumstances would reasonably regard as being likely to prejudice your judgment of what is in the public interest

then you must leave the meeting (including the meeting room and public gallery) and take no part in the discussion.

(5) Dispensations

You may take part in the discussion of and vote on a matter in which you have been granted a dispensation.

Sensitive Information

13. (1) An interest will be a sensitive interest if the 2 following conditions apply:

- (a) that you have an interest (whether or not a DPI); and
- (b) the nature of the interest is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.

(2) Where it is decided that an interest is a “sensitive interest” it will be excluded from published versions of the register. The Monitoring Officer may state on the register that the member has an interest the details of which are excluded under this section.

(3) Where the sensitive interest is a DPI the usual rules relating to disclosure will apply save that the member will only be required to disclose that they hold a DPI in the matter concerned.

2012 No. 1464

LOCAL GOVERNMENT, ENGLAND

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

<i>Made</i> - - - -	<i>6th June 2012</i>
<i>Laid before Parliament</i>	<i>8th June 2012</i>
<i>Coming into force</i> - -	<i>1st July 2012</i>

The Secretary of State, in exercise of the powers conferred by sections 30(3) and 235(2) of the Localism Act 2011(a), makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and shall come into force on 1st July 2012.

(2) In these regulations—

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000(b) and other securities of any description, other than money deposited with a building society.

Specified pecuniary interests

2. The pecuniary interests which are specified for the purposes of Chapter 7 of Part 1 of the Act are the interests specified in the second column of the Schedule to these Regulations.

Signed by authority of the Secretary of State for Communities and Local Government

Grant Shapps
Minister of State

6th June 2012

Department for Communities and Local Government

(a) 2011 c.20.
(b) 2000 c. 8.

SCHEDULE

Regulation 2

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(a).</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

(a) 1992 c. 52.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 30 of the Localism Act 2011 provides that a member or co-opted member of a relevant authority as defined in section 27(6) of the Localism Act 2011, on taking office and in the circumstances set out in section 31, must notify the authority's monitoring officer of any disclosable pecuniary interest which that person has at the time of notification. These Regulations specify what is a pecuniary interest. Section 30(3) of the Act sets out the circumstances in which such an interest is a disclosable interest.

A full impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.