

APPLICATION
OF THE
COUNCILLORS'
CODE OF CONDUCT
WITH REGARD TO
PLANNING MATTERS



Department of the
Environment

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INTRODUCTION

1. Parts 1-8 of the Northern Ireland Local Government Code of Conduct for Councillors (the Code) came into force on 28 May 2014 and Part 9 (application of the Code with regard to planning matters) comes into force on 1 April 2015. This guidance is to assist members on the interpretation of Part 9.
2. From 1 April 2015, councillors will be moving from being consultees on development plans and planning applications to being responsible for drawing up their own local development plans and taking decisions on what development should be approved or refused in their council area and on potentially taking enforcement action against alleged breaches of planning control.
3. This guidance is of relevance to all councillors as all councillors will have contact with planning issues, either as advocates for or against planning applications, as members of the planning committee, or as members of the full council. Your specific role will vary depending on whether you are on a planning committee or not. The guidance applies equally to decision-making whether by planning committees or full council (in cases where the full council is called upon to take a decision on a planning-related matter). This guidance is here for your protection and to assist you, whether you are a planning committee member or not, by advising what you can and cannot do in relation to planning and to provide the public with assurance over the probity of the planning system.
4. The Councillors' Code of Conduct details the principles and rules of conduct which you are required to observe. These principles and rules of conduct apply equally when you are undertaking the planning functions of the council. This guidance makes specific reference to the rules in the Code in relation to declaration of interests (section 6 of the Code), lobbying and access to councillors (section 7 of the Code), and decision-making (section 8 of the Code) and explains under each heading how the rules apply to councillors and, specifically, to planning committee members, where applicable. A glossary of planning terms is included at Annex A. For ease of reference a separate document has been prepared which contains a handy list of dos and don'ts.

5. While dealing with planning may seem daunting at first, members should remember that a common sense approach will be of considerable benefit. This guidance is not exhaustive and does not address other areas of possible concern to councillors such as how to conduct site visits, handle the media etc. This guidance is supplementary to the Code and members should be advised that the Code takes precedence and should always be referred to by members in the first instance. While the Office of the Northern Ireland Commissioner for Complaints will have regard to this guidance when investigating and adjudicating on alleged breaches of the Code, any complaint will be assessed against the provisions of the Code itself. The guidance will be reviewed after the first year of operation to determine if any changes are needed.
6. In addition, members should refer, as necessary, to:
- guidance issued by the Northern Ireland Commissioner for Complaints on the Code;
 - guidance issued by the Equality Commission for Northern Ireland on section 75 obligations;
 - the protocol for Working Relationships between Councillors and Local Government Officers; and
 - their council's standing orders on the operation of planning committees.
- Members should also seek advice from their planning officers and / or legal adviser, when required.

ROLE OF THE PLANNING COMMITTEE

7. The main role of the planning committee is to consider applications made to the council as the local planning authority and decide whether or not they should be approved. In relation to the local development plan, the planning committee's role is to clear the local development plan before it is passed by resolution of the council. Enforcement often requires professional assessment as to whether development has met regulatory requirements and, if not, the steps required to address any identified breach of planning control. This activity may lead to action through the courts and it is recommended that all enforcement activity should be carried out by planning officers, in accordance with each individual council's scheme of delegation and enforcement strategy (which should be approved by the planning committee), and not members.

DISCLOSURE AND DECLARATION OF INTERESTS

8. Section 6 of the Code refers to section 28 of the 1972 Local Government Act which sets out the duty required of councillors to declare any pecuniary interest, direct or indirect, in the course of a meeting. **You must not speak or vote on a matter in which you have a pecuniary interest.** If such a matter is to be discussed by your council, you must withdraw from the meeting whilst that matter is being discussed. **You must also declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting.** A significant interest is one where you anticipate that a decision on the matter might reasonably be deemed to benefit or disadvantage you to a greater extent than other council constituents. Again, you must withdraw from any council meeting when the matter is being discussed. Paragraphs 6.6 – 6.11 of the Code detail under what circumstances dispensations to speak and vote may be granted.

What this means for planning committee members

9. The Code requires you to declare any pecuniary (financial) interest and withdraw from the meeting (for example, a planning application submitted by yourself, partner / spouse or family member). Where you have a significant private or personal non-pecuniary interest (e.g. a planning application submitted by a close friend, close associate, or body or organisation of which you are a member) you must declare this and you must then withdraw from the meeting when the matter is being discussed. In a situation where a large number of members might declare an interest at the same time, paragraphs 6.6 – 6.8 of the Code detail under what circumstances you can remain in the meeting after having declared a significant non-pecuniary interest. **It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any such interest.** If in doubt you should seek advice from appropriate council officers (e.g. senior planning officers) or a legal representative.

Examples

A councillor was suspended from the planning committee for 3 months because he had spoken against an application for a snack bar but had failed to declare that he had a non-financial interest because he was an office bearer at the Church which objected to the proposal.

A councillor who was a member of the planning committee applied for permission to replace an existing caravan with a dwelling. The application was recommended for refusal by officers because it was within an Area of Outstanding Natural Beauty. The chairman of the planning committee used his casting vote to approve the application. The councillor concerned had declared an interest and left the room but a complaint was made that the councillor and chairman were friends. The Ombudsman found there had been 'maladministration leading to injustice'. The only councillors who should have voted on the application were those whose relationship with the councillor would not lead a member of the public to think that their decision, because of that relationship, would be biased. The association between the two had not been confined to council business but included church functions, political events and

10. If you submit your own planning application, you have the same rights as any member of the public to explain your proposal to an officer but you should not seek to improperly influence the decision. You may make written representations to officers about the proposal but you may not address the planning committee (an agent could do this on your behalf). Again, you should declare your interest and leave the room during the debate and the vote.
11. If you have substantial land for development, property or other interests which would **require you to declare an interest and prevent you from voting on a regular basis** you should not sit on a decision-making committee that deals with planning applications. This is not intended to stop landowners etc. from sitting on planning committees; rather it is intended to ensure the efficient operation of the planning committee by limiting those who would be regularly called upon to declare they have an interest which would prevent them from voting. It is not so much the scale of any land or property holdings but the extent to which they might affect your ability to carry out the duties of a planning committee member in an efficient manner.

Example

You are a property developer with extensive holdings across the region, some of which have been included in the local development plan for development (or potentially could be included). If you sit on a planning committee, the extent of your holdings might require you to declare an interest on a regular basis, preventing you from taking part in the decision-making process.

12. If you work as a lobbyist for a developer you must declare this as an interest and you must not then be involved in any decision-making process relating to, or potentially

affecting, that developer. **You must not act as an agent for people pursuing planning matters within your council even if you are not involved in the decision-making on it.**

What this means for non planning committee members

13. The rules in relation to the disclosure and declaration of interests apply to all councillors, whether they sit on a planning committee or not.

LOBBYING AND ACCESS TO COUNCILLORS

14. Paragraph 7.4 of the Code states that, 'if you are lobbied on matters such as applications made under regulatory powers or matters of a quasi-judicial nature, such as the determination of certain licence applications, and you will have a role in the council's decision on that matter, you must:
 - (a) make it clear that you are not in a position to lend support for or against any such application; and
 - (b) direct any such representations to the appropriate department of the council.
15. Paragraph 7.5 states that if you are asked to decide on such matters, you must not;
 - (a) organise support for a particular recommendation on the matter;
 - (b) organise opposition to a particular recommendation on the matter;
 - (c) lobby other councillors about the matter;
 - (d) comply with political group decisions on the matter where these differ from your own views: and
 - (e) act as an advocate to promote a particular recommendation in relation to the matter.

What this means for planning committee members

Development management

16. Councillors, particularly members of the planning committee, can expect to be approached by applicants, agents, objectors and developers who wish to express their views on particular planning applications. It is a normal and perfectly proper part of the political process that any individual should be able to lobby the council or a

councillor. However, if you are a member of the planning committee you should exercise caution and common sense when it comes to listening to those who would wish to lobby you about a particular planning application. It has to be recognised that there may be tension between your role as a local councillor, wishing to represent the views of particular constituents or groups, and your role as a planning committee member. While you may wish to support the views of those you represent, you must accept that, **if you wish to be a decision-maker on planning matters, your primary duty is to act in the best interests of your council as a whole, and not individual constituents or particular interests, in line with legislative and policy requirements.** If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in that cause.

17. If an approach is made to you by an applicant, agent or other interested party, including other councillors, in relation to an existing or proposed planning application, you **must**:
 - make it clear that you will not be in a position to make a decision on a particular application until you have heard all the evidence, including the planning officer's report, at the planning committee meeting; and
 - direct any such representations to the appropriate department of the council.

18. In addition, if you are approached, you can:
 - listen to the views expressed;
 - give advice regarding relevant planning policies;
 - seek factual information about the progress of a case;
 - advise those who are lobbying that they should contact the relevant planning officer so their opinions can be included in the officer's report to the committee; and / or
 - advise those who are lobbying to write or speak to a member who is not on the planning committee.

Examples

You are approached by a developer in the local pub and he wishes to hear your views on a particular planning application he has submitted regarding a local housing development. You can listen to the developer and, where relevant, advise him that the area he is seeking planning permission for is currently zoned for housing in the local development plan but that the details of the application would be considered by planning officials who will make a recommendation to the planning committee. As a planning committee member you must make it clear that you cannot express an opinion on the application until you have heard all the arguments for and against the application. You can advise the developer to ensure planning officers are aware of all relevant facts regarding the application and, if he wishes to have a councillor advocate for his application, he should approach a councillor who is not on the planning committee.

A councillor on the planning committee, who admitted that he had sent an email to other council members regarding his views on an application, was suspended for lobbying other councillors to reject the application.

Pre-application discussions

19. Sometimes a potential applicant for planning permission will approach the council in order to discuss an application before submitting it to the council. Such pre-application discussions can be of considerable benefit to both parties and are generally encouraged. However, it would be easy for such discussions to become, **or be seen to become**, part of the lobbying process (e.g. if you agreed to meet the developer alone). While you are free to attend any pre-application discussions, it should always be made clear at the outset that discussions will not bind the council to making a particular decision and that any views expressed are personal and provisional, as members will need to weigh all material considerations before reaching a view on any application in due course. The same approach should apply to any meetings / discussions which occur before a decision is taken.
20. If you are a member of the planning committee and you receive a request to attend or organise a meeting to discuss a planning proposal that has yet to be submitted to the council, you must refer the request to the appropriate planning officer, so that officers can arrange the meeting and be present and all parties are given an equal opportunity to present their point of view. A formal record of attendees, issues raised and advice given should be maintained of the meeting and placed on the file / electronic record.
21. It is important that any approaches by lobbyists, whether informal or otherwise, are formally recorded and that any representations made to you form part of the public

information leading to any decision. You should inform the relevant planning officer in writing (as soon as possible but preferably before the planning committee at which the application is to be determined) of any approach, which will be documented and placed on the planning file / electronic record for public viewing. A note should also be taken of any relevant phone conversations and passed to the planning officer so a record can be placed on the file / electronic record.

22. As a planning committee member, you may decide that you cannot remain impartial and that you wish to support your constituents' views regarding a particular planning application. If you decide to adopt such a position **you cannot then take part in the decision-making of the planning committee in relation to that application.** You should make this position clear as soon as possible to the chair of the planning committee and planning officials. You have the same rights as any other councillor: you can lobby other planning committee members (provided you make it clear that you are doing so as a local councillor / resident and not as a planning committee member) and you are free to speak at the planning committee on behalf of constituents or other parties, provided the public are also allowed to attend the meeting for the same purpose, after which you must leave the room while the members consider the matter and not take part in the voting. This should be recorded in the minutes.

Political group meetings

23. As planning applications must be determined on their own merits, **political group meetings or discussions must not be used to decide how councillors should vote on an application.** While you are free to discuss your opinion on planning matters at political group meetings, you must not comply with political group decisions where these differ from your own. One option would be for planning committee members to consider withdrawing from political groups meetings when specific planning applications are being discussed.

Full council

24. Some councils may opt to have the full council act as the planning decision-maker on certain planning applications (e.g. where a major development is significantly contrary to the local development plan, or contentious cross-boundary applications). If the

application was discussed at the planning committee and you made your initial views known you are still entitled to take part in the decisions to be made by the full council so long as you make it clear you will only make a final judgement when all the relevant material considerations are before the meeting that will determine the application. However, the same rules apply when the full council is the decision-making body – if you have lobbied on an application (either for or against) you must declare it and not take part in the decision-making. **The key principle is that you cannot lobby for or against a planning application and then be a decision-maker on that application, whether the decision is taken by a planning committee or the full council.**

25. **You must never seek to influence planning officers to provide a particular recommendation on any planning decision.** This applies equally to all councillors, whether they sit on a planning committee or not. **You must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your council.**

Local development plan

26. As a planning committee member your role in relation to the local development plan is to provide input to the local development plan and to then clear the plan before it is ratified by the full council. You are likely to be lobbied by interested parties, including landowners, developers and community groups, both in connection with preparing policy, designating environmental and other policy areas, and especially with regards to the zoning of land. If you are approached, having listened to the views expressed, you must make it clear that you are not in a position to lend support for or against the matter and you must make known to planning officers what representations from constituents and other interested parties you have received on the local development plan. In addition, you can advise constituents to make their views known to the relevant planning officer.

Example

You are approached by a landowner who is objecting to the draft local development plan as it does not include land he owns in the areas zoned for housing. He would like your support in amending the draft plan. You can listen to the landowner and advise him to forward his objections to planning officers but, if you are part of the planning committee deciding on the local development plan, you must not indicate to the landowner that you will support his cause. You must also advise planning officers of any representations made to you.

27. You must not attempt to influence planning officers beyond the provision of information, or make public statements about pending policies and proposals in the draft plan prior to public consultation. The same principle is equally applicable to all councillors.
28. As a member of the planning committee you will be given the opportunity to both present arguments in favour of or against proposals. **However, this should be done in the public interest (i.e. for the benefit of the council area as a whole) and not to represent any private interest.** Once a decision is made members of the planning committee are advised to respect the decisions of that committee and not to actively seek to undermine their decisions. All local development plans will be subject to a public examination, allowing developers, landowners and residents the opportunity to present their views on the draft plan. A planning official will be available to present the corporate view of the planning committee. Whilst it would not be appropriate for a member of the planning committee to represent an objector by presenting a view contrary to that presented by the planning committee, it is reasonable for councillors not on the planning committee to advocate the position of an objector if they so wish. However, again this should be subject to the principles and rules of the Code.

What this means for non planning committee members

Development management

29. As a councillor you can encourage developers and others to engage with the council and residents in the planning process. Councillors who are not part of the decision-making process can make representations and address the relevant planning committee. You can also make known to planning officers what representations from constituents and prospective developers you have received on a planning application, attend public meetings / events, and assist constituents in making their views known to the relevant planning officer. All representations should be recorded on the application file / public record.
30. While you are free to lobby other councillors who are on the planning committee about a particular planning application (this should be to pass on your views and

concerns or the views and concerns of your constituents) you should not apply pressure on other councillors to obtain a commitment to vote in a certain way. **You must not take any payment, or reward in kind, to lobby your council on a planning matter (this applies to all councillors). You must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your council. If you have lobbied on a particular application you cannot act as a decision-maker should the application go before the full council for determination.**

Local development plan

31. You are free to pass on your views and those of your constituents with regard to the local development plan. However, **you must not attempt to influence planning officers to include policies and proposals, such as the zoning of land in the local development plan, which would be to your advantage or the advantage of any individual or group, or make public statements about pending policies and proposals in the draft plan prior to public consultation.**

What this means for all councillors

Schemes of delegation

32. Each council is obliged to draw up a scheme of delegation which allows decision-making for certain local applications to be delegated to a council's planning officers to act on the council's behalf in implementing its planning policies. Councillors should not lobby or pressure planners to come to a particular decision on those applications / consents which are delegated to them.

Enforcement

33. As a councillor you may also be the person who is first made aware of an alleged unauthorised development and you should - quite properly - refer the matter to the council for further investigation and possible enforcement action. Once the initial referral has been made to the appropriate department for investigation, you should advise all subsequent inquirers to deal directly with the relevant department / officer, and **you should not lobby for a particular outcome or put pressure on planning officers to either take or not take investigative or enforcement action.** This does not

prevent you from seeking factual information about the progress of the case (subject to any data protection legislation).

DECISION-MAKING

34. Paragraph 8.1 of the Code details the rules you must adhere to when participating in meetings or reaching decisions regarding the business of your council.

What this means for planning committee members

Development management

35. **The important principle to remember is that planning applications should be determined on their own merits and in accordance with planning policy and that decisions on planning applications cannot be taken until all the evidence has been presented at the relevant planning committee meeting and properly considered.** You must not clearly express your intention to vote in a particular way before the planning committee meeting; rather you must make it clear that you are willing to listen to all the considerations presented at the meeting before deciding on how to vote. **If you have clearly made up your mind on a planning application in advance of the planning committee meeting you must not take part in the debate and the vote.** This guidance is equally applicable to other meetings where planning decisions are taken, such as the full council.

Example

During your election campaign you vocally objected to a proposed development of 15 flats and your objections were reported in the local media. The application has now come before the planning committee. Because of your previous opposition to this development, you should declare this, leave the room and not take part in the discussions or the vote.

36. This does not mean that you cannot have your own opinions or hold a preliminary view about a planning application. It simply means that you should keep an open mind and be willing to listen to all the arguments, representations and evidence presented at the planning committee meeting. You should always consider whether a reasonable onlooker, with knowledge of the relevant facts, would consider that you

were biased. For example, if you state that, 'wind farms are blots on the landscape and I will oppose each and every one that comes before the committee', you cannot claim to have retained an open mind on the issue or that you are prepared to determine each application on its own merits. If, however, you state, 'I understand that many people find wind farms ugly and noisy but I am willing to listen to all the arguments before a decision is taken as to whether any more wind farms should be allowed in this area', you should not be accused of having pre-judged the application.

37. **Planning decisions can only be made on valid planning grounds** (see Annex A), which are called material considerations. A material planning consideration is one that is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). They include all the fundamental factors involved in land use planning. Some material considerations you must always take into account include the Regional Development Strategy, the local development plan, relevant planning policies and statutory consultee responses. Other material considerations vary depending on the circumstances of each case and include the design of buildings, impact on neighbourhood, and representations from the public and elected representatives. Planning officers will provide the planning committee with a report with a recommendation on a particular proposal based on their professional opinion, taking into account all relevant material considerations, including information on representations received about the proposed development. This report forms the basis on which your decisions are made, although, as a councillor, you are not necessarily bound to agree with a planning officer's recommendation. This is acceptable where planning issues are finely balanced as there should always be scope for members to express a different view from officers. A planning committee can accept or place a different interpretation on, or give different weight to, the various arguments and material planning considerations. Arguably, the most difficult planning decisions are those where the planning merits of the case are in favour of granting permission, but there are large numbers of local public objections to the proposed development. It is for you as an elected member to decide how important the material considerations are, bearing in mind the provisions of your local development plan.

38. If you propose, second or support a decision contrary to an officer's recommendation you will need to clearly identify and understand the **planning reasons** (which must fairly and reasonably relate to the application concerned) for doing so. The reasons for any decisions which are made contrary to the planning officer's recommendation **must be formally recorded** in the minutes of the planning committee meeting and a copy placed on the planning application file / electronic record.

Example

A planning application has come before the planning committee for a fast food outlet with a recommendation to approve from the planning officer. You are aware that a number of your constituents are opposed to this application; however, there are no planning grounds on which a refusal can be supported. You should not vote against the application simply on the grounds that your constituents are opposed to it. If you decide to support your constituents in opposing the application, you will forfeit your right to be a decision-maker with regards to this application.

Local development plan

39. The local development plan-making stage sets out how the council sees the area as developing and outlines the policies against which individual proposals will be assessed. All councillors have a vital role in facilitating engagement with their communities in the production of planning policy by encouraging them to express their views on the plan-making process.
40. In law, planning applications should be determined in accordance with the local development plan. This means that where land is zoned for a particular use, the planning committee should ensure it is reserved for that use: for example, an application for housing in an area zoned for housing should be approved unless the design and layout fails in terms of the environmental, open space and access standards, or its design and layout has a detrimental impact on the character of the area or neighbouring amenity. If you propose, second or support a decision contrary to the local development plan you will need to clearly identify and understand the **planning reasons** for doing so and clearly demonstrate how these reasons justify overruling the local development plan. The reasons for any decisions which are made contrary to the local development plan **must be formally recorded** and a copy placed on the planning application file / electronic record.

Glossary of planning terms

Local development plan

The local development plan is central to the planning system. The local development plan forms the basis for public and private investment decisions, providing a degree of certainty as to how land will be developed. Local development plans allocate appropriate land for different types of land use and, as well as setting out the main planning requirements which developers are expected to meet in respect of particular zoned sites, they may also show designations such as conservation areas, areas of outstanding natural beauty, sites of local nature conservation importance and so on.

Development management

Development management is the processing of planning applications and other consents. The main role of the planning committee is to consider applications made to the council as the local planning authority and decide whether or not they should be approved.

Material considerations

There is no statutory definition of what constitutes a material consideration but there are two main tests for deciding whether a consideration is material and relevant:

- it should serve or be related to the purpose of planning. It should therefore be related to the development and use of land; and
- it should fairly and reasonably relate to the particular application.

Generally a material consideration is a planning issue which is relevant to the application and can include national, European and council policies, comments by the public and by organisations the council has consulted, the design of the proposed development, and the effect of the plan on the environment.

In many respects it is easier to identify what is not a material consideration or is not relevant to planning, and therefore what should not form the basis of a decision on a planning application. The matters below are not considered to be material considerations:

- private interests, e.g. loss of views or competition between businesses;
- moral considerations, e.g. sex shops, betting offices or religious objections to licensed premises;
- political considerations or ideological dislikes, e.g. construction of private schools or hospitals;
- the cost of the development;
- the applicant's lack of ownership of the site (planning permission relates to the land and not to the person seeking planning permission);
- issues covered by other legislation, e.g. building safety which is the responsibility of building control.

Valid planning matters that should be taken into account include:

- the local development plan;
- regional planning policy;
- emerging policies in a local development plan that is not yet approved or adopted;
- the planning history of the site, particularly any recent appeal decisions relating to the same land;
- the suitability of the site for the proposed development;
- the suitability of the type of development proposed in terms of compatibility with neighbouring property and the locality;
- design issues, including the use of materials, the height, scale, bulk and layout of the development;
- potential loss of privacy or overshadowing of adjoining properties;
- the potential adverse impacts on adjoining property from noise, odours, fumes, etc;
- the economic benefits of the development through the creation of new jobs or possible loss of local employment;
- the impact of the development on the built and / or natural heritage of an area.

This list is not exhaustive but it does represent the considerations taken into account in most planning decisions. The relative weighting given to these various considerations is a matter for judgement in each case.

Conditions

Most applications are granted permission subject to conditions. Conditions enable developments to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

Schemes of delegation

Section 31 of the Planning Act (NI) 2011 requires each district council to introduce a scheme of delegation. Schemes of delegation allow decision-making for certain local applications to be delegated to a council's planning officers to act on the council's behalf in implementing its planning policies. The details of each delegation scheme, which will only relate to applications within the category of local developments, will be for individual district councils to determine (a scheme of delegation cannot include major or regionally significant applications).

This means that the majority of planning applications should be determined by planning officers rather than by the direct consideration and vote of the planning committee; however, such decisions are still, legally, decisions by the council.

Councils will also make arrangements to delegate the decisions on the other planning consents they are responsible for determining as well as the enforcement of planning.