

## ***Appendix 5***

**Officer Amended Part 5 of the Constitution**



**Epping Forest  
District Council**

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# Planning Code of Practice

## (i) The Aim and Application of the Planning Code

1. This Code is intended to provide Councillors, staff and the Public advice and guidance on the planning process.
2. This Code has the status of advice and should be used to shape Councillors conduct and consideration of all planning matters they are asked to determine. It also deals with the involvement of Councillors and officers of the Council in the operation of the planning system outside the formal decision-making process.
3. In this Planning Code the term “Planning Meeting” means any formal meeting where a planning matter is being determined up to and including the Full Council meeting to determine such an application referred to it by Planning Committee.
4. It cannot, however attempt to cover every eventuality or situation.

### **Further advice on specific circumstances is available from the Council’s Monitoring Officer and Deputy Monitoring Officer.**

5. Councillors and staff should bear in mind that planning matters are the source of most complaints from the public and early advice is key to ensuring that such complaints do not occur.

## (ii) The relationship with the Local Members' Code of Conduct;

6. This Code is complementary to the provisions of the Council’s Code of Conduct for Councillors and Officers but does not repeat its provisions which can be found in Part 5 of the Constitution. It should also be read in conjunction with guidance on gifts and hospitality.

## (iii) Roles and responsibilities

Councillors are elected members of the Council (see Article 2 for their roles and functions).

7. Members role in the Planning process is to make decisions openly, impartially, with sound judgement and for justifiable planning reasons. When planning applications are reported to Committee, the report will contain an Officer recommendation as to whether planning permission should be granted or refused. Members are entitled to bring their own judgment to bear on planning applications and to make a decision contrary to Officer recommendation, however it is important that such decisions are taken on sound planning grounds which will withstand scrutiny at a possible appeal or if the decision is referred to the Local Government Ombudsman.

8. Members should bear in mind their overriding duty is to the whole community, not just to the people in their Ward and, taking account of the need to make decisions impartially, they should not favour, or appear to favour, any persons, business or locality irrespective of other considerations.

### **Decisions on Planning Applications should always be made on their planning merits.**

9. Some types of planning decision have been delegated by the Council to officers to determine. The extent of this delegation is set out in the Constitution (Part 3, Appendix 3).

## (iv) Registration and Declaration of interests

10. Upon being elected, Councillors are required to complete a form to register their disclosable pecuniary and other interests. They are required to keep this document under review, to maintain that declaration, and to amend it as necessary within 28 days of any change in circumstances.

11. This form also contains the interests of the Councillor’s spouse, civil partner or person living

with the Councillor as a spouse or civil partner (called the 'relevant person')

12. The form is part of the Register of Councillors' interests and is maintained by the Council's Monitoring Officer. The register is available for public inspection and reproduced on individual Councillors' webpages for public inspection.

13. Rule 11 of the Council Rules requires Councillors to withdraw from meetings if they have a disclosable pecuniary interest, firstly having declared the existence and nature of the interest. This also applies to interests of the relevant person. Such a declaration is also required by Councillors exercising executive functions. (see Part 5 of the Constitution).

14. Any Councillor being the applicant (with or without representation or by their relevant person) for an application is required to identify him or herself as the applicant on the planning application form, and advise the Monitoring Officer. That councillor must then take no part in the planning process, and may not attend that part of the meeting. Such an instance will always create a DPI for the Councillor. All Councillor applications will be heard by the relevant Councillor committee and not otherwise dealt with under delegation.

15. Declaring such an interest at a planning meeting may give rise to a need to alter the Councillor's declaration of interests form. Advice on such matters is available from the Monitoring Officer or Deputy.

16. Members are also subject to the 'Public Perception' test, introduced by Council in 2016, which asks Councillors to consider whether they are predetermined in any matter before participating.

17. For more information of the public perception test see the adopted Code of Conduct for members.

**(v) Predisposition, Predetermination and Bias**

18. Councillors must ensure that they do not fetter<sup>1</sup> their ability to participate in the decision making process on an application by making up their mind (or clearly indicating that they have made up their mind) on how they will vote prior to the consideration of the application by the planning committee.

19. The planning committee should, when considering an application, take into account all views expressed (in writing, orally, evidence from the planning officer and the views of other Councillors) in such a way that they are fairly considered in a balanced way before the planning committee reaches a decision.

20. Councillors can be predisposed to a particular point of view but must have an open mind at the point they are required to consider and determine the matter.

21. Section 25(2) of the Localism Act 2011 provides that a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because:

- (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- (b) the matter was relevant to the decision.

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<sup>1</sup> 'Fetter' – confine or restrain themselves by a previous act which makes them appear to have prejudged the issue

22. However, there are some actions which would undermine the Councillor's position; for example, by making declarations of opposition or support in a public forum. This includes press statements, residents' meetings and using social media. As meetings are webcast, Councillors should not appear to have predetermined applications by coming to meeting with pre-prepared written speeches. Councillors must guard against being, or giving the appearance of being, predetermined in this way.

**(vi) Membership of other councils and bodies**

**Parish and Town Council's**

23. Applications are routinely referred to Parish and Town Councils for statutory consultation. The Parish/Town Councils do not determine planning applications, but submit (if agreed) comments as part of the planning application process.

24. District Councillors do not need to make general declarations of interest at those meetings if it is based solely on the dual hatted nature of their role. (Other interests must be declared)

25. Where District Councillors are asked to express their views as part of their role as a Parish or Town Councillor, they are able to do so. It may be appropriate at the meeting to make it clear that they may take a different view once they have heard all relevant policy and representations at a subsequent planning meeting when they are determining the application.

26. Applications made to the District Council by a Parish or Town Council themselves are likely to create a conflict of interest for the Councillor if they have been party to decisions made by the Council concerned. It would normally create a non-pecuniary interest under section 8.1 of the Code of Conduct. The public perception test would then apply.

**Interests of Cabinet members**

27. Cabinet members who have sponsored any planning application made after a report or portfolio holder decision will normally have created a non-pecuniary interest in that application. Participating in any subsequent determination of that application would be subject to the public perception test.

**(vii) Pre-application discussions**

28. Enabling a developer to brief and seek the views of elected Members and Planning Officers about planning proposals at an early stage (usually pre-application or where this is not possible, very early in the formal application period) is important in ensuring that new development is responsive to and reflects local interests/concerns where possible. Early Councillor engagement in the planning process is encouraged and supported by the National Planning Policy Framework and is particularly important to allow Councillors to help shape future strategic developments in the Local Plan.

29. Discussions between a potential applicant and the council (officers or Members), prior to the submission of an application can be of considerable benefit to both parties and is encouraged. However, it would be easy for such discussions to become, or to be seen, particularly by objectors, to become, part of a lobbying process on the part of the applicant.

30. Applicants wishing to engage in Pre-Application discussions will be advised that:-

(a) if they wish to secure Member input into the Pre-Application discussions they can request that the Member(s) attend a meeting with a Planning Officer present. The decision as to whether or not a Member attends such a meeting rests with the Member.

(b) Members must respect the confidentiality of information which the applicant or planning officer makes clear is disclosed in confidence.

31. If a Member wishes to express their views on a matter the subject of Pre-Application discussions they may set out those views in writing sent to the relevant Planning Officer who will place a copy of the communication from the Member on the Pre-Application file. Members should be aware that such comments may in due course become publicly available.

32. Members should not disclose any confidential information or documents held on Pre-Application files other than to another Member or to an officer of the Council.

33. The purpose of member briefings should be:

- To enable Councillors to provide feedback that supports the ultimate submission of high quality development through the pre-application process, and avoid potential delays at later stages;
- To ensure Councillors are aware of significant applications prior to them being formally considered by the planning committee;
- To make subsequent planning committee consideration more informed and effective;
- To ensure issues are identified early in the application process, and improve the quality of applications; and
- To ensure Councillors are aware when applications raise issues of corporate or strategic importance.

34. In order to avoid such perceptions, pre-application discussions will take place within the following guidelines. (Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place at any time before a decision is taken):

- The decision-making process applicable should be explained to the potential applicant.
- It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- Advice should be consistent and based upon the development plan and other material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers.
- A written note should be made of important meetings.
- If possible, at least one officer should attend any such meeting involving a Member, or notify the officer in advance of the meeting.
- In the case of advice given by planning officers it should always be made clear that any views which they express are subject to review at a more senior level with whom the final recommendation to committee lies or the officer properly exercising a delegation.

**(viii) Contact with applicants, developers and interested persons**

35. Approaches from applicants, potential developers and applicants or objectors are a normal and proper aspect of the political process. A planning committee decision may be susceptible to judicial review where the impartiality and integrity of Members is called into question.

36. To avoid such problems, discussions should take place within the following guidelines:-

- Members should attend pre-application meetings only if organised in accordance with section (vii) above
- Members must take care not to indicate they have made up their minds on any planning application or issue before they have heard and/or read all the evidence, and should make clear that any views expressed are personal and provisional.
- Members should make it clear that they will not be in a position to make a decision until they have heard and/or read all the relevant evidence and arguments at the Committee meeting. The Committee report may contain issues previously unknown to Members; other aspects, not previously evident, may arise during the Committee's deliberations.

**(ix) Public exhibitions and presentations**

37. Members may attend exhibitions arranged by developers which are open to the general public. There is no need for an officer to be present, however the preceding provisions of this Protocol, notably those relating to Pre-determination and Members not conveying the impression that they have any authority from the Council, apply equally to attendance at exhibitions and presentations as they do to other occasions.

38. Members should not attend exhibitions arranged by developers on an occasion when the general public are not able to attend unless accompanied by a planning officer.

39. On occasions developers may in advance of an application being considered by the Planning Committee wish to give a presentation to Members to explain their development proposals and/or to provide an opportunity for Members to raise questions in connection with the proposals. The decision on whether to agree to a request for a presentation rests with the Head of Planning (or any other officer delegated to make such a decision) following consultation with the Chairman of the Planning Committee.

40. The foregoing provisions shall not preclude Members from attending a closed meeting or presentation by a developer which the Member attends in a non-Planning capacity (i.e. in the Council's capacity as a landowner).

**(x) Lobbying**

41. It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications.

42. It is, however, important that Members protect their impartiality and integrity in planning matters. Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However, expressing an intention to vote one way or another before a planning committee meeting would prejudice impartiality.

43. Lobbying may be in person or by circulation of letters or documents to all or some Councillors.

44. Councillors should not organise support for or against a planning application and should not

lobby other Councillors, as this would signal that they had made up their mind before hearing the evidence. Each Councillor should make up his or her own mind on the evidence and facts presented to the committee.

**(xi) Officers**

45. Officers are paid employees of the Council. For planning, the Council employs appropriately qualified staff to make recommendations on planning applications to Councillors to be determined at meetings.

46. The function of officers is to support and facilitate the Councillors in their work and to ensure that robust, lawful decisions are made and that planning decisions are made in accordance with the local plan and material planning considerations.

47. Officers are required to act with impartiality at all times in determining or making recommendations upon planning applications. In considering applications and in advising members of the public and Councillors on planning policy, enforcement and other planning related matters, Officers are bound by the Officer Code of Conduct.

48. This process must be transparent and respect the sometimes contrary views, maintaining respect between the parties. Failure to maintain professional respect at any part of the planning process is a breach of the relevant code of conduct for either party.

49. In certain circumstances, where officers within development control or economic development submit a planning application, applications will be heard formally at the relevant member committee. (Part 3 – Scheme of Delegation – Appendix 3).

50. Members should not put pressure on Officers to put forward a particular recommendation. This does not prevent Members from asking questions or submitting their views in writing to the case officer. However, Members need to be aware of the risk of predetermination as outlined above.

51. Members should recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and other professional codes of conduct. As a result, Planning Officers views and opinions will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members. Members should bear in mind that in assessing planning applications and formulating their recommendations officers will, in light of the statutory obligation placed upon the Council to determine applications in accordance with the statutory Development Plan unless other material consideration indicate otherwise, have particular regard to the Council's adopted planning policies.

52. Members and officers are expected to treat each other with respect and professional courtesy at all times, especially at Planning Committee where meetings are broadcast live and made available for later viewing.

**(xii) Attendance and participation at public meetings**

53. All planning decisions are taken in public session at meetings except if they are delegated to officers. Planning issues usually attract high levels of public interest and attendances reflect this.

54. With high levels of public interest and sometimes contentious decisions to be made, confidence in the planning system is important. Issues such as conflicts of interest, lobbying, officer advice, the conduct of meetings and focus on planning considerations will colour the public perception positively or negatively. All participants need to keep this in mind. This will include your attendance at other public meetings convened locally. See section (v) on predisposition.

55. The Council has a policy of allowing public speaking by applicants, objectors, other statutory authorities and Parish/Town Councils. The rules are set out in Article 10 which may be varied by the Chairman at their discretion. A ward member also has the right to speak at Planning Committee.

**(xiii) Site visits**

56. Formal Site visits may be undertaken of any potential development site subject to application where there is a substantial benefit to the decision-making process. Further detail on the procedures that apply to site visits and the circumstances where a formal site visit is appropriate can be found in Article 10 – Development Control.

57. Councillors may wish to view sites themselves prior to meetings but should stick to the public highway unless invited onto the site by the owner, observe practical 'lone working' principles and bear in mind the advice given at section (v) about predetermination.

**(xiv) Officer reports and recommendations;**

58. Officers will provide professional advice to members with a recommendation whether or not planning permission should be granted, based on the officer's assessment.

59. Each officer's report to the committee will provide:

- Details of the site, a site plan, its ward and description of the proposal and an internet link for viewing the plans
- The proposed decision recommended by the officers
- Details of either conditions (for approval) or reasons for refusal
- Relevant site history and policies applicable
- Consultations carried out and representations
- A narrative on the issues and considerations of the application and a conclusion.

If, having read the reports prior to the meeting, Councillors have questions relating to the applications, they should contact the case officer without delay. This enables the officer to answer queries of a factual nature that could delay determination should they be asked at the meeting.

**(xv) Conduct during public meetings**

60. At the Planning meeting, applications will be heard in the order they appear on the agenda except where the chairman decides otherwise and seeks the assent of the meeting to the change of order. An example of where this could be agreed is when the meeting is being attended by a large number of people only interested in one contentious item. Chairmen should not delay items to allow Councillors, applicants or objectors to be present. (see rule V1 – Voting – Voting on quasi-judicial matters)

61. Each development control item will be dealt with as follows:

- (a) the planning officer will present her/his report including planning considerations, relevant local and national planning policies and a summary of any late representations received
- (b) evidence will be taken from registered public speakers (see Article 10, Appendix 1 for the rules of debate that apply);
- (c) Councillors will then debate the matter seeking information from the planning officer that arises from the debate. Councillors' commentary should be based on the material planning considerations of the matter. It is the convention that the Chairman will allow both



the ward councillor and non committee members to speak as part of the debate.

62. All reports on Planning applications will contain an officer recommendation. Members are not required to consider a motion in the terms of the officer recommendation before any other motion is considered. If a Member decides during the course of debate at the Planning Committee that they wish to move a Motion contrary to the officer recommendation they will still need to formulate reasons for the decision which should be read to the Committee. Officers may assist Members in the formulation of wording for a Motion to be put to the Planning Committee and supporting reasons, but should officers do so such assistance should not be understood as constituting support for either the Motion or reasons. The Chairman of the Planning Committee may at their discretion request officers to appraise the Committee of their views on the Motion and supporting reasons.

63. Members should not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the Officers' introduction to the matter.

64. If a Member proposes, seconds or supports a decision contrary to Officer recommendation, or the Development Plan, they should clearly identify and understand the planning reasons leading to this conclusion or decision. Those reasons must be given prior to the vote. Members should be aware that they may have to justify the resulting decision by giving evidence in the event of any appeal or challenge.

**(xvi) Decision-making;**

**Delegated Decision making**

65. The Council's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers (see Part 3 of the Constitution – Scheme of Delegation – Appendix 3). This scheme may be reconsidered from time to time by the Council.

66. Where officers are determining applications under their delegated powers, an officer report will be completed which must record the material planning considerations that have been taken into account in the decision making process and the decision made by an officer with the relevant delegated power from the Council.

67. Councillors may call-in an application proposed to be determined by officers to the planning committee for determination in accordance with the rules set out in Part 3 of this constitution, but must consider their reasons for so doing.

**Decision making by Councillors**

68. At the conclusion of the debate (subject to no contrary motion being moved and seconded) the recommendation of officers will be put to the committee by the chairman. This does not require a seconder.

69. Decision making at meetings shall be by way of a majority of Councillors present at a meeting voting positively for either approval or refusal. This is subject to the preservation of the required quorum at the time the vote is taken and shall be subject to Rule V1 (voting).

70. Voting down the recommendation of officers at the meeting does not mean that a decision has been taken on the application. A motion from a Councillor, seconded by another Councillor with reasons that are planning based is required.

**(xvii) Decisions contrary to the officer recommendation;**

71. Decisions on planning proposals must be taken in accordance with the local plan unless

material considerations indicate otherwise. In determining planning and other applications the committee is entitled to decide the weight to be attached to the various planning considerations which are relevant to the application. This can lead to a decision which is contrary to the recommendation of the Officers. The Committee can for example decide:

- to refuse planning permission where officers have recommended approval;
- agree with officers that permission should be refused but for different or additional reasons; or
- grant permission subject to different conditions or legal requirements than those recommended.

72. Where any Councillor is proposing to put forward a motion contrary to the officer recommendation, the committee Chairman will ensure that the planning reasons are apparent **before** a vote is taken and will ensure that the planning officer is given an opportunity to explain to the committee the implications of their decision.

### **(xviii) Appeals**

75. An applicant applying for planning permission whose application is refused by the Council has a statutory right of appeal. Rights of appeal are also afforded in respect of certain types of other refusals (i.e. reserved matters consent, listed buildings consent). Such appeals may be determined by way of written representation, informal hearing or public inquiry. Once an appeal is made, the Council ceases to have jurisdiction in the matter and Members are able to make representations on the matter to the Inspector appointed to determine or hear the appeal. However, a Member with a Disclosable Pecuniary Interest or an Affected Interest in the matter should disclose that fact and the nature of the interest when making representations.

76. Although a Member when making representations in connection with an appeal may disclose to the Inspector that they are a Member of the Council, care should be taken to avoid the impression that the Member is making representations on behalf of the Council or is authorised by the Council to make such representations.

77. In some cases, especially where Members have refused permission against Officer advice, it is encouraged that a Member provide written comments or attend a hearing/public inquiry to support the officer(s) defending the Councils decisions and or to give evidence on behalf of the Council.

### **(xvx) Training;**

78. It is fundamental that Councillors (including Parish and Town Council members) involved in planning matter should receive appropriate training **before** being involved in making planning decisions. The Council will facilitate such training, which should be regarded as obligatory for all Councillors. The Standards Committee have also determined that Councillors should attend Code of Conduct training at least once per Council term. Councillors should also attend sessions designed to keep them abreast of new developments, as specified by the Authority.

### **(xx) Review.**

79. This Code will be reviewed from time to time as necessary by the Council's Constitution Working Group having taken input on standards matters from the Standards Committee.

Version V5 – As approved by XXXX