

Planning Protocol – Suggested Changes to Sections 5, 6 and 22

5. "Dual Hatted" Councillors

- 5.1 The Code of Conduct does not automatically prevent a Councillor from considering the same matter at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 10(2)(a) of the Code to members of "another relevant authority" reinforces this point.
- 5.2 If an issue is for discussion at both the parish and district level, and a Councillor sits on both authorities, you should:
- (a) at the parish level make it clear that you will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier; and
 - (b) at the district level, declare personal (but not prejudicial) interests arising from your membership of the Parish Council which has already expressed a view on the matter and make it clear that the Parish Council's view does not bind you and that you are considering the matter afresh.
- 5.3 These guidelines apply even if a proposal has a direct impact on a particular location. For example, there is no objection, in principle, to a Councillor speaking and voting on issues in the District Council's development plan that particularly affect your parish. However Councillors must still consider if they have a prejudicial interest arising from the impact of the proposals on their personal well-being or financial position. In such circumstances, it would not be appropriate for you to rely on paragraph 10(2).
- 5.4 In some situations, it is unrealistic to expect a member of the public to believe you would disregard the interests of another public body on which you serve. For example, you should not sit on decision-making bodies dealing with planning when they decide applications from an authority on which you also serve. Even though these situations fall within the scope of sub-paragraphs 10(2)(a) and (b), a reasonable member of the public would think that your judgment is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances.

5.5 Where the procedures of the District Council dictate that a planning application is referred on for further consideration at the District Development Control Committee or the District Council itself, members of Council should not regard themselves as a "dual hatted" Councillor for the purposes of this section of the Protocol.

6. Fettering a Councillor's Discretion

- 6.1 District Councillors (including those who are also members of Town or Parish Councils) should take care to ensure that they are seen to maintain an open mind until they have heard all the evidence and arguments which will be presented at the appropriate Area Plans Sub-Committee, the District Development Control Committee or, if necessary, the Full Council. This is particularly the case where Councillors serve on Parish councils and have spoken and voted on a planning matter and have not reserved their final position. (See section 5 above).
- 6.2 However, if members in advance of the decision-making meeting commit themselves to a firm view on a planning matter and state this publicly, whether in meetings of

another body, in the media, in election material, or otherwise, they would be unable to demonstrate that all the relevant facts and arguments had been taken into account. They would have "fettered" their discretion. Were they to participate in a decision in those circumstances, they would have a prejudicial interest and might place the decision made by the Council at risk of judicial review. If, therefore, Councillors comment publicly they must be careful to reserve their final position. An open mind on the issues must be genuine. A mere statement to that effect in the face of actions and comments to the contrary will not suffice.

6.3 Any Councillor who has fettered his or her discretion, whether before or after election to the Council, must declare a prejudicial interest under the Code of Conduct and leave the meeting. Even if the member does not have any other interest, they must leave the meeting.

6.4 Any member who is uncertain as to whether his or her actions would be regarded as having fettered his or her discretion should ask the Standards Committee or the Monitoring Officer for advice.

6.5 For the purposes of this section of the Protocol, a Chairman or member of an Area Plans Sub Committee should not regard themselves as under a duty to support the views of that Sub Committee if the planning application or other matter is referred on to the District Development Control Committee or the District Council.

22. Development Proposals Submitted by Councillors and Officers or Where They Are Objectors

- 22.1 Applications to their own Authority by serving and former Councillors and officers and their close friends, partners, employers or business associates (including those of relatives) and relatives themselves can easily give rise to suspicions of impropriety.
- 22.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving Councillors, Chief Officers and staff of Planning Services together with other Council staff who act as agents for applicants should play no part in the decision-making process in respect of those proposals. The Council's Monitoring Officer and the Head of Planning and Economic Development should be told by the Councillor or member of staff that an application has been made as soon as it is submitted. In the event that the Monitoring Officer or the Head of Planning and Economic Development is the applicant they should notify the Deputy Monitoring Officer and an Assistant Head of Service respectively. Both postholders shall also advise the appropriate Joint Chief Executive. Councillors and officers therefore should be scrupulous in completing the appropriate sections of the application form prescribed by the Government. Any such applications, whether by Members or officers, cannot be dealt with by the Head of Planning Services under delegated powers. All such cases will stand referred to the Area Plans Sub-Committee concerned.
- 22.3 A Councillor submitting an application will invariably have a personal and prejudicial interest in the application. He or she must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered.
- 22.4 A Councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should not 'improperly seek to influence a decision about the matter' (Paragraph 12(1)(c) of the Code of Conduct). 'Improperly' should not imply that a Councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
- 22.5 An officer submitting an application has a clear interest in that application. He or she must also declare that interest and leave if present at the meeting at which the application is discussed. They must then leave the meeting. Applications submitted by Councillors or officers will always be determined by an Area Plans Sub-Committee or the District Development Control Committee and not by the Head of Planning Services under delegated powers.
- 22.6 In all such cases, the aim must be to ensure that applications are dealt with in the same way as those by any other person. This will avoid any suggestion of preferential treatment.
- 22.7 Members of the Council and officers will have a clear interest in a planning matter if they are an objector in respect of a proposal being made by another party. In those circumstances, the same procedures shall be followed as outlined above.