

# **Planning Code of Practice**

## 1. THE NEED FOR A CODE

- 1.1 Decisions on planning applications rely on informed judgement within a firm policy context. The determination of planning applications can be highly contentious because the actual decisions affect the daily lives of everyone and the private interests of individuals, landowners and developers. This is heightened by the openness of the system (ie it actively invites public opinion before taking decisions) and the legal status of development plans, decision notices and enforcement action. It is important, therefore, that the planning process is characterised by open, fair, impartial, transparent and defensible decision making.
- 1.2 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should be able to show that decisions have been taken in an impartial, unbiased and well-founded way.

## 2. SCOPE OF THE CODE

- 2.1 This guidance note sets out the practices which Ryedale District Council follows to ensure that its planning system is fair and impartial, and explains the conduct expected of District Council Officers and Members on planning matters.
- 2.2 It applies to both Councillors and Officers who are involved in operating the planning system - it is not, therefore restricted to professional town planners or to Members in Committee meetings. The successful operation of the planning system relies on mutual trust and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.
- 2.3 Both councillors and officers are guided by codes of conduct. The statutory local code of conduct, supplemented by guidance in a document called "Probity in Planning for Councillors and Officers" published by the Local Government Association/Planning Advisory Service, provides standards and guidance for councillors. Employees will be subject to a statutory Employees' Code of Conduct.

Officers who are Chartered Town Planners are 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. However, not all Planning Officers are members of the RTPI, and parts of the Code of Professional Conduct are incorporated into this Code. The District Council also has a Code of Conduct for Employees, by which all employees are required to abide. In addition to these Codes, the Council's Standing Orders set down rules which govern the conduct of Council business.

- 2.4 Whilst this Code, and the others referred to above, attempt to be as clear as possible, ***if in doubt about how the guidance applies in particular circumstances seek advice.*** Officers should seek advice from the Head of Planning. Members can seek advice from the Specialist Services Lead (Head of Planning) or from the Head of Corporate Governance as appropriate.
- 2.5 Appendix 1 also contains a list of other guidance on planning which is available from the Council.
- 2.6 This guidance is mainly about planning applications, but also applies to the ways in which the Council handles all applications, planning enforcement matters and also how the Council prepares a Local Plan. References to applicants and objectors should therefore generally also be taken to refer to complainants and alleged contravenors in enforcement cases, and to landowners, developers and objectors involved in Local Plan proposals. The guidance applies to planning matters on which a decision will be taken by the District Council, but not to planning matters which are the responsibility of other Councils.

### 3. THE ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 3.1 Councillors and Officers have different, but complementary, roles. Both serve the public. Councillors are responsible to the electorate, and are elected to represent all people of the District. Officers are responsible to the Council as a whole. They advise the Council and its committees, and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may be given to Officers only through a Council or Committee decision. Any other system which develops is open to question. A successful relationship between Councillors and Officers can only be based upon mutual trust, respect and an

understanding of each other's roles and positions. This relationship, and the trust which underpins it, must never be abused or compromised.

3.2 Therefore:

- ***Individual Councillors should not give instructions to Officers on planning matters.***
- ***Officers' actions will follow Council policy and Committee decisions.***
- ***Political group meetings should not be used to decide how Members should vote on applications and enforcement cases and Councillors are not mandated on these matters by a political group.***

3.3 The Members' Code of Conduct sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests (see next section), but also appropriate relationships with other members, staff and the public, which will impact on the way in which councillors participate in the planning process. Of particular relevance to councillors serving on planning committees is the requirement in the Members' Code of Conduct that a member must comply with the following guidance:

- *Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.*
- *Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.*

3.4 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Councillors should take account of these views, they should not favour any person, company, group or locality, nor put

themselves in a position where they appear to do so. **Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a Planning Committee.**

3.5 Officers must always act impartially. The RTPI Code of Conduct says planners:

- shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions;
- shall act with competence, honesty and integrity;
- shall fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;
- shall discharge their duty to their employers, clients, colleagues and others with due care and diligence;

These guidelines should apply to all Place Specialist Officers. A requirement for staff to act impartially is likely to be a requirement of the statutory employees code. Through the Local Government and Housing Act 1989, restrictions are placed on the outside activities of senior staff, such as membership of political parties and serving on another Council.

3.6 Impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on members in the Members' Code of Conduct. Members are placed under a requirement by the Members' Code of Conduct to:

- *Always treating people with respect, including the organisations and public I engage with and those I work alongside; and*
- *Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it.*

- 3.7 The principles in Part 1 of the Members' Code of Conduct should guide the conduct of all Councillors. The general principles are attached at Appendix 7. In summary:

***The actions and conduct of Councillors and Officers should be such as would seem appropriate and above suspicion to an impartial outside observer. Decisions should be taken in the interests of the District as a whole, and should not be improperly influenced by any person, company, group or Parish/Town Council. The key is to demonstrate that each Council and Councillor's decision was taken on the facts alone, without any undue outside pressure.***

#### 4. WHAT PLANNING DECISIONS ARE BASED ON

- 4.1 Planning decisions are based on planning considerations and cannot be based on immaterial considerations. The Town and Country Planning Act 1990, together with Government guidance and cases decided by the courts, define what matters are material to planning decisions.

- 4.2 ***It is the responsibility of Officers in preparing reports and recommendations to Members, and in advising Committees, to identify the material planning considerations and to ensure Members are aware of those matters which are not material to planning decisions.***

- 4.3 Section 70 of the Town and Country Planning Act 1990, provides that Members have a statutory duty when determining planning applications, to have regard to the provisions of the development plan where material to the application, and to any other material consideration. The starting point for decisions on planning applications is the development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says that planning decisions shall be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of:

- The Ryedale Local Plan

- 4.4 Other material planning considerations include:

- Government guidance contained, for example, in the National Planning Policy Framework, Circulars and Ministerial announcements;

- planning briefs and other 'supplementary planning documents' approved by the Council following public consultation;
- statutory duties in relation to conservation areas and listed buildings;
- representations made by statutory consultees and other people making comments, to the extent that they relate to planning matters;
- the environmental qualities of the surrounding area or the visual character of a street (this includes the scale, design and materials of buildings and the landscaping of a site);
- the amenity and privacy of dwellings;
- the character of an area in other senses (in terms of noise or other forms of pollution);
- road safety (both directly as in the case of a dangerous access or indirectly in terms of car parking and traffic generation);
- public services, such as drainage;
- public proposals for using the same land; and
- legitimate planning gain/community benefit.

4.5 There is much case law on what are, and are not material planning matters. ***Planning matters must relate to the use and development of land.*** For example, the following are ***not*** normally planning matters and ***cannot be taken into account in planning decisions:***

- personal and financial considerations;
- private property rights and boundary disputes;
- covenants;
- effects on property and land values;
- developers' motives;
- public support or opposition, unless it is founded on valid planning matters;
- the fact that development has already begun (people can carry out development at their own risk before getting permission and the Council has to judge development on its planning merits);
- the fact that an applicant has carried out unauthorised development in the past;
- "trade objections" from potential competitors;
- moral objections such as activities likely to become addictive, for instance betting shops, lottery kiosks or amusement arcades;

- the belief that an application is submitted by an owner with the intention of selling the property at an enhanced value;
- the loss of an attractive private view (for instance when development is proposed on the opposite side of the road to or at the rear of an objector's house);
- the fear that an objector's house or property might be devalued;
- the fact that the applicant does not own the land to which his application relates (this can be overcome by agreement with the owner and, if it is not, the development cannot happen);
- the fact that an objector is a tenant of land where development is proposed; any consequences between landlord and tenant are unrelated to the application;
- allegations that a proposal might affect private rights, eg restrictive covenants; property maintenance; ownership and private rights of way disputes; boundary disputes; (such considerations are legal matters on which objectors should consult their own solicitor or advisor since it will not be possible for Officers of the Council to advise as to such rights);
- arguments of a personal kind in relation to the circumstances of the applicant. It is essential that Members are aware that planning permission goes with the land. The Government inquiry into planning in North Cornwall ('Inquiry into the Planning System in North Cornwall - DoE 1993') makes it plain that personal preferences are not reasons for granting planning permissions. Personal circumstances may, very exceptionally, have a place in the system. Therefore, information about the applicant should not be material to the consideration of a planning application in the vast majority of cases, and personal circumstances cannot therefore, in general, outweigh planning considerations.

## 5. DUTIES AND SANCTIONS

As a Local Planning Authority for that part of the District of Ryedale which is outside the North York Moors National Park area, Ryedale District Council has a statutory duty to determine applications which are not County matters under the Town and Country Planning Act 1990 together with applications under the Planning (Listed Buildings and Conservation Areas) Act 1990. The Planning Committee exercises the District Council's statutory Local Planning Authority function and is the decision maker for the purpose of determining applications. Decision makers have a very special responsibility and have a number of statutory duties. There are also sanctions against the Council and Members for a failure to properly discharge the



Local Planning Authority function. These duties and sanctions are summarised in Appendix 2.

## 6. THE DECISION MAKING PROCESS

In reaching a decision on a planning application, Members need to:-

- (i) identify the development plan policies which are relevant to the particular development proposal;
- (ii) identify any other material considerations;
- (iii) if there are other material considerations, the development plan should be taken as a starting point and the other material considerations should be weighed in reaching a decision. Considerable weight should be attached to the relevant policies of an up to date adopted development plan. Exceptionally, the personal circumstances of an occupier, personal hardship, or the difficulties of businesses which are of value to the character of a local community may be material. Such arguments will seldom outweigh the more general planning considerations. That means such considerations generally have less weight.

At a fundamental level, Members should go through the following three stage process when making a decision:-

### Stage 1

- (i) Identify the relevant development plan policies and other relevant material considerations (if any) in respect of the application which need to be taken into account in the decision making process.
- (ii) Identify irrelevant matters which should not be taken into account in the decision making process. These include the applicant's personal qualities such as having a long term family connection with the area, his or her popularity in the community, the fact he/she is a local farmer, the fact that a son or daughter is just about to marry.

## **Stage 2**

Attach sufficient weight to the development plan policies and other material consideration for and against refusal or approval.

Less weight is generally attached to personal circumstances. When they arise they fall to be considered not as a general rule, but as an exception to a general rule to be met in special cases.

Paragraph 13 of The Planning System: General Principles (2005) indicates that Members must have proper regard to Government Statements of Planning Policy which indicates the weight to be given to relevant considerations. If Members elect not to follow relevant statements of the Government's Planning Policy, they must give clear and convincing reasons.

## **Stage 3**

Weigh the material considerations in reaching a decision.

A visual representation of this 'weighing' exercise is attached as Appendix 3 for consideration by Members.

A failure to follow the proper decision making procedure can give rise to a Judicial Review Challenge or a finding of maladministration by the Local Government Ombudsman.

- ***In the decision making process, Members should not take into account irrelevant matters, allow them to outweigh important planning considerations and fail to take fully into account Government guidance on the weight to be attached to relevant considerations.***
- ***Members should determine applications in accordance with the advice given to them by their professional officers unless they have good planning reasons, in the knowledge of all material considerations, to take a decision contrary to the officer's recommendation.***

## 7. LOBBYING OF AND BY COUNCILLORS

- 7.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who may be affected by a planning decision will often seek to influence it through an approach to their elected Ward Member or to a Member of the Planning Committee. As the Nolan Committee's Third Report states: 'local democracy depends on Councillors being available to people who want to speak to them. It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representative, the Councillors themselves' (paragraphs 285, 288). However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called into question.
- 7.2 Councillors need to take account of the general public's (and the Ombudsman's) expectation that a planning application and other applications will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. The determination of a planning application, or of a planning enforcement case, is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly, with the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Overview and Scrutiny Committee acting as the Corporate Governance Standards Committee that a Member has breached the local code.
- 7.3 A Councillor who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding publicly to support a particular outcome - even campaign actively for it - it will be very difficult for that Member to argue convincingly when the Committee comes to take its decision that he/she has kept an open mind and has carefully weighed the evidence and arguments presented (perhaps in some respects for the first time) at Committee. Whilst in most circumstances this would not amount to a prejudicial interest in terms of the

Members' Code of Conduct, **the proper course of action for such a Member would be to make an open declaration and not to vote.** This can be seen, however, as a severe restriction on the Member's wish - duty even - to represent the views of the electorate. In most cases it should be possible for a Member to make it clear that they are willing to listen to all the considerations presented at the Committee before deciding how to vote. A Member may listen to a particular body of opinion, without engaging in lobbying for a particular outcome, and wait until the Planning Committee, to hear all the evidence presented, before making a final decision.

7.4 It is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active ward representative and what the Members' Code of Conduct with General Principles of Local Government in Part 2 – Outcomes requires in “Championing the needs of residents”. However, the following guidance will be appropriate in most cases.

7.5 *Councillors who are lobbied on a planning matter before the Planning Committee meets to consider it:*

- *may listen to what is being said;*
- *may give procedural advice (eg to write to the Planning Department, the name of the Case Officer, the deadline for comments, whether the application is to be determined by the Committee or the Specialist Services Lead (Head of Planning), how decisions are reached through Officer recommendation/ Planning Committee).*
- *should refer the person and any relevant correspondence to the Case Officer, so that their views can be recorded and, where appropriate, summarised in or attached to the report to the Committee;*
- *should take great care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have considered all the evidence and arguments;*
- *should make it clear that Councillors are legally required to keep an open mind and will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee;*

- *should not openly declare which way they intend to vote in advance of the relevant Committee meeting, or otherwise state a commitment to oppose or support the application (or enforcement case or Local Plan proposal);*
- *should not negotiate detailed planning matters with applicants, agents, objectors, etc;*
- *should pass relevant correspondence to the Case Officer prior to any Committee meeting;*
- *should report instances of significant, substantial or persistent lobbying to the Specialist Services Lead (Head of Planning) or the Head of Corporate Governance.*

7.6 Councillors who have openly declared their voting intention (on a planning or any other application, enforcement case or Local Plan proposal) in advance of the relevant Committee meeting should make an open declaration and not vote because they could be considered to have fettered their discretion. In those circumstances a Member should not speak and vote as a Member of the Planning Committee but may speak as a member of the public.

In such cases the Member has been excluded not because of the code but because the Member's previous actions have fettered his/her discretion and possibly laid the Council open to the objection that the planning process had been tainted.

7.7 To avoid impressions of improper influence which lobbying by Members can create:

- Councillors should in general avoid organising support for or opposition to a planning matter to be determined by the District Council, and should not lobby other Councillors - such actions can easily be misunderstood by parties to the application and by the general public;
- Councillors should not put pressure on Officers for a particular recommendation;
- Political group meetings should not be used to decide how Members should vote on planning matters;
- Councillors should not act as agents or advocates for planning applications or any other applications, enforcement cases or Local Plan proposals to be determined by the District Council. Where a Councillor is involved in a particular planning matter, she/he should take care not to appear to try to influence other Members, and should declare an interest at the relevant Committee meeting.

- Whenever a Member is approached or lobbied on any particular application Members should consider distributing on a regular basis the Advice Note attached as Appendix 4 which makes clear the neutral stance which Members need to adopt to remain independent and impartial pending consideration of all the material facts at the Committee meeting.
- If Members attend private site meetings in their ward at the request of the applicant they should express no opinion on the merits of the application and should normally advise the applicant that the Member may also speak to other interested parties including objectors.
- Members should not normally undertake private site inspections in another Member's ward without prior notice to the Ward Member. Again Members should express no opinion on the merits of the application.

## 8. PRE-APPLICATION AND PRE-DECISION APPLICATIONS

8.1 The Council encourages pre-application discussions between Place Specialist Officers and potential applicants. These bring advantages to all parties: they can avoid applications being made which are clearly contrary to policy, and so avoid unnecessary worries for those who could be affected; they can avoid abortive work for the Council and applicants by giving clear information about Local Plan policies, etc before proposals are designed; and so they can improve the quality of applications and development.

8.2 However, discussions might be seen (especially by objectors) as part of a lobbying process. In order to avoid such problems, pre-application discussions should take place within clear guidelines. Although the term 'pre-application' has been used, the same considerations apply to any discussions which take place before a decision is taken:

- The Officer should always make it clear at the outset that the discussions will not bind a Council to making a particular decision, and that any views expressed are personal and provisional. By the very nature of such meetings, not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.
- Advice should be consistent and based upon the development plan and material considerations.

- Where the Specialist Services Lead (Head of Planning) is the decision-maker (for delegated matters - see section 16), he/she should normally not meet the applicant, agent or objectors to discuss a case without another Officer present. A written note should be made of all discussions. At least one Officer should attend such meetings; it may be helpful for more than one person to attend. A follow-up letter is advisable, at least when documentary material has been left with the Council. A note should also be taken of telephone discussions.
- Whilst Councillors will not normally be involved in pre-application or pre-decision discussions, if a Councillor is present he/she should be accompanied by an Officer. The Councillor should be seen to be advised by the Place Specialist Officer on development plan and other material considerations, and the Officer should take a note of the meeting.

8.3 Applicants and potential applicants sometimes ask for advice on whether planning permission will be granted in particular circumstances. Advice may also be sought on the lawful use of land. For clarity, and to avoid a future decision on a planning application being compromised:

- Officers should normally ask someone requesting advice to put the request in writing - so that it is clear on what proposal or circumstances advice is being given.
- Written replies to such requests will contain a caveat that advice cannot bind a future decision of the Council on any subsequent application.
- Persons seeking advice about the lawful use of land should be advised that Parliament has provided a procedure for a Local Planning Authority to certify what a lawful use of land is by means of an application for a Certificate of Lawfulness of Existing Use of Development. Advice from an Officer cannot legally bypass this procedure.
- Officers will be unable to say what their recommendation is on a particular planning matter until all issues have been considered and the papers published for the relevant Committee.

## 9. REGISTRATION OF INTERESTS

- 9.1 The Localism Act 2011 and the Members' Code of Conduct place requirements on members on the registration and declaration of their interests and the consequences for the member's participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Guidance on the registration and declaration of interests will be issued by and advice may be sought from the Council's Monitoring Officer. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.
- 9.2 Failure to register or disclose a disclosable pecuniary interest will be punishable upon conviction by a fine of up to and including Level 5 (£5,000). In addition, the Magistrates' Court may on conviction disqualify a Member from being a Member of a Council or any other relevant authority for up to five years. Breaches of the Members' Code of Conduct in relation to a failure to declare other pecuniary interests and non-pecuniary interests can only be dealt with as a breach of the Code. Prosecutions for a breach of the legislation relating to disclosable pecuniary interests may only be brought by or on behalf of the Director of Public Prosecutions. The DPP is unlikely to authorise a prosecution unless the breach of the legislation is considered serious.
- 9.3 A register of members' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection. A member must provide the Monitoring Officer with written details of relevant interests within 28 days of his election, or appointment to office using the register of interests form. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.

## 10. DECLARATION OF INTERESTS BY MEMBERS AT COMMITTEE

- 10.1 The new Members' Code of Conduct introduced under the Localism Act 2011 introduces the following two separate and distinct sets of rules in relation to declarations of interests:
- (1) Disclosable Pecuniary Interests; and
  - (2) Disclosable Other Personal Interest.





## 10.2 **Disclosure of Pecuniary Interests (DPI)**

Disclosure of Pecuniary Interest (DPIs) are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. These are listed in the last two pages of the Members' Code of Conduct.

10.3 A Member has a Disclosable Pecuniary Interest in relation to a matter being discussed at Committee if it directly affects the financial position of the Councillor or the financial position of a Councillor's partner or spouse in particular:

- employment, employers or businesses;
- companies in which they are a director or where they have a shareholding of more than £25,000 face value or more than 1% of nominal shareholding;
- land or leases they own or hold;
- contracts, licenses, approvals or consents

10.4 the Councillor's Disclosable Pecuniary Interests include the Councillor's Pecuniary Interests or interests of:

- spouse or civil partner;
- a person living with the Councillor as husband/wife;
- a person living with a Councillor as if they are civil partners/and the Councillor is aware that this other person has the interest;

10.5 If a Member has a DPI in any matter, he/she must not participate in any discussion of the matter at the meeting. The Act does not define "discussion". Members must not participate in any vote on the matter.

## 10.6 **Disclosable Other Personal Interest**

In general terms, in relation to Disclosable Other Personal Interests, Members will need to ask themselves two questions when deciding if they can participate in the consideration of a matter to be determined by Committee or Council:-

## 10.7 Firstly – Do I have a personal interest?

Yes if your interest falls within the definition of a “personal interest” as defined in the code. Please refer to Part B of the Members’ Code of Conduct.

Councillors need to ask themselves the following questions:-

- A. Have I declared an interest in the Register of Interests?
- B. Does it affect the well being or financial position of myself, my family, close associates; or my family’s or close associates:
  - employment, employers or businesses;
  - companies in which they are a director or where they have a shareholding of more than £25,000 face value;
  - business partnerships; or
- C. Does it affect the well being or financial position of the following organisations in which I hold a position of general control or management:
  - other bodies to which I have been appointed or nominated by the Council;
  - other public authorities;
  - charitable bodies;
  - bodies whose main purpose is to influence public opinion or policy.

### **More than the majority of other people in the ward?**

Where a Member considers he/she has such a personal interest in a matter, he/she must always declare it, but it does not then necessarily follow that the personal interest debars the Member from participation in the discussion.

## 10.8 Secondly – Is my personal interest pecuniary/prejudicial?

The Member then needs to consider whether the personal interest is a **pecuniary/prejudicial** one. The Code provides that in general terms a personal interest becomes a pecuniary/prejudicial one if the interest is financial or relates to a regulatory issue eg planning permission and the following test is satisfied:

### **“Non-Participation in case of Pecuniary Interest**

*Where you have a personal interest in any business of your authority you also have a pecuniary interest in that business where the interest is one which*

*a member of the public with knowledge of the relevant facts would reasonably regard as so significant that is likely to prejudice your judgement of the public interest and where that business-*

*(a) affects our financial position of the financial position of a person or body described in paragraph 10.7 above; or*

*(b) relation to or affects the determining of any approval, consent, licence, permission or registration in relation to your or any person or body described in paragraph 10.7 above”.*

**10.9 If a Member has such a personal and pecuniary/prejudicial interest, he/she should not participate in a discussion on the matter at Committee and *must withdraw from the room* and must not seek improperly to influence a decision in the matter.**

10.10 It must be emphasised that the rules relating to the declaration of interests are not like a mathematical formula in which there is always a right answer and Members will always know when they should declare a pecuniary/prejudicial personal interest and leave the Committee Chamber.

10.11 Part of the new Code which deals with declarations of interest is a framework for Members to exercise a reasonable judgement – after taking advice from a Senior Officer.

10.12 If the interest is clear and substantial a Councillor should not take part in the proceedings and should always withdraw from the meeting whilst the matter is being considered.

10.13 A failure by a Councillor to declare a personal and pecuniary/prejudicial interest in accordance with Code of Conduct can give rise to a complaint to the Corporate Governance Standards Sub-Committee of Ryedale District Council has been set up in accordance with requirements established by Parliament to regulate the conduct of Members.

10.14 It can be seen that these provisions of the code are an attempt to separate out interests arising from the personal and private interests of the councillor and those arising from the councillor's wider public life. The emphasis is on a consideration of

the status of the interest in each case by the councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts. Guidance may be sought from the Monitoring Officer or other Senior Officers. In the end, however, the decision will be for the councillor alone to take.

- 10.15 Translated to a councillor's involvement in planning issues, the two stage test of personal and pecuniary prejudicial interests will, as now, require a councillor to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the councillor, his family, friends or employer.
- 10.16 However, if a member, in advance of the decision-making meeting had taken a firm view on the planning matter, either in meetings of the other body or otherwise, they would not be able to demonstrate that, in participating in a decision, 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 might place their authority in danger of judicial review. This is the general approach taken by this guidance on appropriate conduct in relation to membership of other bodies and the effects of such membership on participation in the planning decision-making process. It is expanded in section 7 on lobbying.
- 10.17 There will be occasions when members of say the Policy and Resources Committee will wish to press for a particular development which the member regards as beneficial to the development of the area. Should that member be able to vote on any planning application relating to that development? The appropriate action is not clear cut, and may depend on the particulars of the case. However, the general advice would be that a member in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he or she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, the member may be seen as an advocate on behalf of the authority for the development in question. In that sense, the member becomes almost the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

10.18 The Council's Constitution requires that a Councillor who declares a pecuniary/prejudicial personal interest should withdraw from the relevant Committee meeting and take no part in speaking or voting on that item.

10.19 Members who need to declare a personal interest on a case should do so at both the Planning Committee and the Policy and Resources Committee.

10.20 Appendix 5 gives some specific examples of when it has been felt necessary to declare an interest, which may help to amplify the above general guidance.

## 11. UNAUTHORISED DEVELOPMENT OR BREACH OF LISTED BUILDING CONTROL

11.1 Members or Officers who are aware of a breach of planning or listed building control on land under their ownership or control should promptly advise the Specialist Services Lead (Head of Planning) or the Head of Corporate Governance of the breach in writing.

11.2 Breaches of planning or listed building control involving a Member or an Officer should be promptly investigated by the Specialist Services Lead (Head of Planning) and the Head of Corporate Governance and be the subject of an enforcement report to the Planning Committee.

## 12. PARISH OR TOWN COUNCIL MEMBERSHIP

12.1 The Council consults the relevant Parish or Town Council or Parish Meeting on every planning application. Place Specialist Officers may, on request, attend a Parish or Town Council meeting early in the life of an application.

12.2 Difficulties can arise for Councillors who are members of a Town or Parish Council as well as the District Council. By taking part in a Parish or Town Council meeting when their comments on an application are agreed, a District Councillor will be seen to have made up her/his mind in advance of hearing all the issues at the decision-making District Council Committee. The member could be considered to have fettered his or her discretion. In those circumstances the member should not participate at the district council meeting.

In such cases the member has been excluded not because of the code but because the member's previous actions had fettered his or her discretion and possibly laid the council open to the objection that the planning process had been tainted. So, a member has to choose whether to form a view at an early stage of the process and campaign for or against the planning applications but be excluded from the final decision-making; or reserve judgment until all views have been considered and only then form a view.

***'Dual' Members should therefore either:***

- ***not take part in the discussion of an application at the Town or Parish Council meeting at which comments are agreed; or***
- ***not take part in the discussion/decision on the application at the District Council Committee;***

Furthermore:

- ***although the consultation response from a Parish/Town Council is a relevant consideration, Members should not automatically defer to the Parish/Town Council view, because Parish/Town Councils do not have the advice of professional Place Specialist Officers in reaching their decision.***

### 13. OFFICER REPORTS TO COMMITTEE

13.1 To ensure that Committees give due consideration to the development plan and other material considerations, all Committee decisions on planning applications, enforcement cases and Local Plan proposals will normally be taken only after the Committee has received a written Officer report. Written Officer reports will be agreed by the Specialist Services Lead (Head of Planning), and/or the Principal Specialist - Place (as the Council's Senior Chartered Town Planners), and will reflect the collective view of the Department - not the view of the individual author.

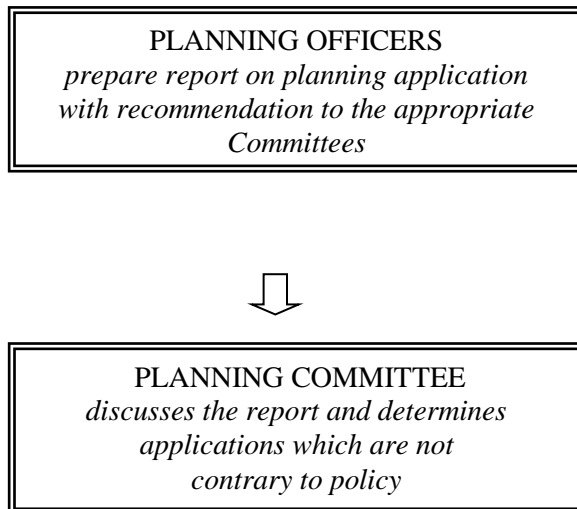
13.2 Reports should be accurate and should:

- cover, amongst other things, the substance of objections and the views of people who have been consulted;
- include reference to relevant material and Local Planning policies and their implications for the case; the site or related history (where relevant) and any other material considerations;

- have a written recommendation of action; oral reporting should be rare and be carefully minuted when it occurs;
- contain an appraisal of the planning considerations which clearly justifies the recommendation and broadly indicates the weight which can be given to any opposing considerations;
- if the recommendation is contrary to the provisions of the development plan, clearly state the material considerations which justify this;
- describe the purpose and content of any planning agreement or obligation proposed in association with the planning permission.

14. COMMITTEE PROCEDURES

14.1 Decisions for most planning applications are taken by the Council's Planning Committee which includes Members of the Council. The procedure for processing planning applications may be summarised as follows:-



14.2 Reports are available to the public five working days before the Committee on request. Paragraph 13.2 describes the content of reports. The application files, containing all comments, are also available at that stage. Late letters and other information may be put to Committee and copies of these are normally available for inspection. The public (including applicants and objectors) can attend Committee meetings and may speak under the terms of the Council's public speaking policy.



- 14.3 The Planning Committee may agree or disagree with the report and recommendation (but see sections 17 and 18 below). Having considered all the relevant planning matters, the Committee may:
- grant planning permission, usually with appropriate planning conditions;
  - refuse planning permission, with justified planning reason(s);
  - defer the application for further consideration.
- 14.4 Planning enforcement decisions are normally taken by the Planning Committee. A written Officer report will normally be prepared in advance of the Committee. The report and the discussion at the Committee on some enforcement matters may not be available to the public, for example if the Council is considering a prosecution in the courts. Schedule 12A of the Local Government Act 1972 as amended sets out what can be considered in private.
- 14.5 Decisions on Local Plan proposals are taken by the Planning Committee, following consideration of a written Officer report.
- 14.6 The procedures governing the conduct of meetings are set out in the Council's Constitution. However, the general public who attend these meetings will usually not be familiar with the Council's Constitution, or this Code. It is therefore important that decisions are made on relevant grounds and that this is the impression left with the public who attend. Responsibility for this rests primarily with the Chairman of the meeting, assisted where appropriate by officers. To facilitate this:
- ***a briefing for the Chairman and Vice-Chairman of the Planning Committee will be held after the Officer reports and recommendations have been published. The purposes of these briefings is to inform the Chairman and Vice-Chairman of the issues, to ensure that the rationale for the Officer recommendation is explained, and to identify any potentially problematic or controversial items;***
  - ***one or more Chartered Town Planners will be present at all Planning Committee meetings at which planning matters are considered;***
  - ***a Legal Officer will normally also be present.***

15. COMMITTEE SITE VISITS

15.1 The Planning Committee may sometimes decide to visit a site prior to determining an application. Site visits sometimes result from a request by a Ward Councillor. It is acknowledged that this is a proper part of the representational role and should normally be acceded to, so long as the Ward Councillor can justify his/her request in relation to material planning considerations. Site visits should not be employed merely to appease local interest in an application.

15.2 However, site visits cause delay and add costs for the applicant and Council, and should only be used where there are substantial benefits. Therefore:

- ***A site visit is likely to be necessary only if the impact of the proposed development is difficult to understand from the plans and any supporting material, including photographs taken by Officers, or if the proposal is particularly contentious.***
- ***The reasons for a site visit should be clearly stated and minuted.***
- ***All Members of the Planning Committee will be invited and should make every effort to attend, so that they understand the issues when the matter is considered at the following Committee meeting.***

15.3 Site visit meetings will be conducted in a formal manner:

- ***The Chairman should start by explaining the purpose and conduct of the site inspection adding that any questions or comments from any individual should be made to all the Members through the Chairman.***
- ***The Officer will describe the proposal and highlight the issues relevant to the site inspection and other material planning considerations.***
- ***The Officer will be asked to point out relevant features which can be observed. Members may also wish to point out features which can be observed, or to ask factual questions of the Officer.***
- ***The applicant and representative of the Parish/Town Council may attend the site inspection and will be invited to draw Members' attention to any salient features or to any relevant factual information.***
- ***To avoid Members being spoken to individually, the Chairman should endeavour to keep the Committee together as a group.***

- ***No discussion or decision-making will take place on site.***
- ***No hospitality will be accepted before, on or after site visits.***
- ***Members or Officers who have a disclosable pecuniary interest or non-pecuniary interest which means they should not participate at Committee on determining the application should not attend a site inspection.***
- ***In all other cases Members should declare when appropriate a non-pecuniary interest.***

## 16. DECISIONS DELEGATED TO OFFICERS

16.1 The Council has agreed that decisions on certain types of application can be taken by the Specialist Services Lead (Head of Planning). These are less contentious, small-scale proposals, such as house extensions, advertisements, small industrial extensions, the discharging of planning conditions and breaches of planning conditions imposed by a Committee. The full list of decisions delegated to the Specialist Services Lead (Head of Planning) is set out in Appendix 6. The system allows quicker decisions to be taken on straightforward matters.

## 17. DECISIONS CONTRARY TO DEVELOPMENT PLAN

17.1 Planning decisions must normally be taken in accordance with the Development Plan (see paragraph 4.3).

17.2 ***If Officers are recommending granting planning permission contrary to the development plan:***

- ***The decision will always be taken by the Committee, and not as a delegated decision.***
- ***The Officer's report to the Committee must clearly identify the material planning considerations and how they justify overriding the Development Plan.***
- ***The application will have been advertised by a site notice and a local newspaper advertisement, in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010 Article 13.***

17.3 If the decision would be a significant departure from the Development Plan, (as defined by Government Direction) the application will be referred - normally after the Planning Committee has agreed a recommendation - to the Secretary of State for Communities and Local Government,, to enable him/her to decide whether to 'call in' the application to be decided centrally.

18. DECISIONS CONTRARY TO OFFICER ADVICE

18.1 If the Planning Committee makes a decision contrary to the Officers' recommendation on a planning application or enforcement case, then:

- *the proposer of the motion to go against the Officers' recommendation, or the Chairman, should state the planning reasons for the proposed decision before a vote is taken; the Ombudsman has said that the reasons should be clear and convincing, and be material planning considerations (see section 4 above);*
- *the Planning or Legal Officer present at the meeting should be given the opportunity to comment upon whether the proposed reasons for the decision are planning matters and, if an approval is proposed, to recommend appropriate planning conditions;*
- *if the decision would be contrary to the Development Plan, then the Officer should comment on the extent to which the other planning considerations could be seen to override the Development Plan, and on whether the decision would be significant departure from the plan requiring reference to the Secretary of State (see section 16 above);*
- *where the Planning Committee indicates that it is not minded to accept the Officers recommendation for approval, the planning application should be deferred to the next Planning Committee meeting where so requested by the Specialist Services Lead (Head of Planning). This one month deferral period enables Officers to prepare clear and convincing planning reasons for refusal;*
- *a detailed minute of the Committee's reasons for departing from the recommendation should be taken and a copy placed on the application file and recorded in the minutes of the Planning Committee; if the decision is contrary to the Development Plan, the minute should state that and clearly set out those planning considerations which override the development plan.*

18.2 If a Committee wishes to amend or add conditions to an approval, Officers should be requested to draft the detailed wording of the conditions in line with the Committee's wishes.

19. APPROVING REPEAT APPLICATIONS FOR DEVELOPMENT PREVIOUSLY REFUSED

19.1 One complaint that frequently arises, and has been investigated by the Local Government Ombudsman, is the approval of a planning application where an application for substantially the same development has previously been refused, where there has not been a significant change in circumstances.

19.2 The principles which can be distilled from Ombudsman cases are as follows:-

- there is perversity and maladministration, if a Local Planning Authority approves a planning application, which has previously been refused, where there has not been a significant change in the planning circumstances;
- the fact that there has been a significant change in the membership of the Planning Committee does not justify inconsistency between current and previous decisions;
- the perversity of approving a planning application, which has been previously refused, where there has been no significant change in the planning circumstances, is maladministration if:-
  - insufficient weight has been given to Officers' recommendations and Central Government guidance; and
  - there is a failure to give and record reasons for the authority's change of mind.

19.3 Members are advised that a serious risk of challenge is posed by a failure to give and record clear and convincing planning reasons for the approval of planning applications for which there is a history of refusals by the Council and Inspectors appointed by the Secretary of State where there has been no significant change in the planning circumstances.

19.4 Therefore:

- ***If a Committee is minded to approve an application for development previously refused, the proposer of the motion for approval or the Chairman should state what the significant change in the planning circumstances justifying approval are before a vote is taken.***
- ***If there is a history of refusals by the Council and Inspectors appointed by the Secretary of State, the proposer of the motion for approval or the Chairman should also state why the Inspector's decision should no longer be followed before a vote is taken.***

20. DEVELOPMENT PROPOSALS SUBMITTED BY, OR AFFECTING, COUNCILLORS AND OFFICERS

20.1 Proposals to their own authority by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. Proposals can take the form of either planning applications or Development Plan proposals, or may involve planning enforcement. 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.

20.2 For planning proposals from Officers and Councillors:

- ***Serving Councillors and Officers who submit their own proposal to the authority they serve should play no part in the decision-making process for that proposal.***
- ***Such proposals will be reported to Committee and not dealt with by the Specialist Services Lead (Head of Planning) under delegated powers.***
- ***The Council's Monitoring Officer should be informed of such proposals by serving Councillors, and the Officers report to the Committee will show that the applicant is a Councillor.***
- ***Councillors and Officers should never act as agents for people pursuing a planning matter with their own authority.***

20.3 For proposals submitted by close relatives and friends of Officers involved with the development control process:

- ***The Officer concerned will have no involvement with the application.***
- ***The Officer concerned should alert the Specialist Services Lead (Head of Planning) to the proposal.***

20.4 Where a planning proposal directly affects the property or personal interests of a Councillor, she/he should play no part in the decision-making process. This would apply, for example if a Councillor submitted comments, as a neighbour, on a planning application.

20.5 Similarly, an Officer should have no involvement in processing a planning proposal which directly affects her/his property or personal interests.

## 21. THE COUNCIL'S OWN DEVELOPMENTS

21.1 Proposals for the Council's own development have to be treated in the same way as those by private developers.

- All applications for the Council's own development will be reported to Committee and not dealt with by the Specialist Services Lead (Head of Planning) under delegated powers.
- All applications for the Council's own development will be the subject of a written Officer report, as with other applications.

## 22. THE MEDIA

22.1 The principles of this Code also apply to press contact. Councillors and Officers when commenting to the media on planning matters should:

- ***have regard to the points made in the section on lobbying (Section 7);***
- ***ensure that they do not give the impression that they have pre-judged the planning application;***
- ***make clear that Councillors will retain an open mind until such time as the full facts are available and these are debated by the appropriate Committee;***

- ***for delegated applications, make clear that the Specialist Services Lead (Head of Planning) will retain an open mind until such time as the full facts are available and presented for decision.***

22.2 Any Officers can provide facts about a planning matter which are in the public domain and available to the media (see guidance note on the Local Government Act 1972). However, the media should be referred to the Head of Planning for attributable comments.

### 23. RECORD KEEPING AND COMPLAINTS

23.1 The Council has its own Complaints Procedure, and a separate leaflet is available. Complaints are first investigated within the Department by an Officer more senior than the Case Officer. If the complaint cannot be resolved within the Department it will be investigated separately by the Council's Customer Relations/Complaints Officer.

23.2 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. It is not possible to keep a full note of every meeting and conversation. However, the guiding rule is that every case file should contain an account of the main events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached.

- ***The main source of this documentation will be Officer report to Committee and, if the Committee does not agree the recommendation, the Committee minutes.***
- ***For delegated applications, a formal note of the main planning considerations is written and kept on file.***
- ***These principles apply equally to enforcement and Development Plan matters.***
- ***All Committee reports and delegated decision reports will be checked and agreed by the Specialist Services Lead (Head of Planning) and/or the Principal Specialist - Place.***



- ***A written note should be kept of all potentially contentious meetings and telephone conversations: this may be in the form of a follow-up letter. Whilst it will be impossible to keep a full note of every meeting, conversation and site visit, a record should be kept of significant events and site visits which have taken place. The extent of the note should be in proportion to the significance of the event.***

23.3 Section 13 gives more details on what reports contain.

## 24. TRAINING

24.1 As section 4 above explains, the planning system is a complex mixture of statute and case law, and of local and national policy, balancing private and public interests. The declaration of interests is also an area which demands the exercise of well-informed judgement.

- A copy of this Code of Practice will be given to each Councillor and Officer in the Planning Department, including new Councillors and employees.
- The Council will provide periodic training events for Councillors on planning, which all Members should attend.
- Members newly elected to the Council must attend a training event on planning within their first year on the Council. A special training event for Members will be held after each four-yearly election of all Members.
- The Council will employ a Chartered Town Planner as Head of Planning, and will attempt to employ trained or Chartered Town Planners to operate its main planning functions.
- The Council will, as far as possible, assist Officers in carrying out training and development activities which enable them to meet the requirements of their post, and enable them to fulfil the 'continuous professional development' requirements placed on Chartered Town Planners.

## 25. LEARNING FROM PAST DECISIONS

25.1 The lessons to be learnt from any complaint against the Planning Service should be considered, recorded, and any necessary changes to procedures implemented. There will be an annual review by the Place Team Managers of a selective number

of planning decisions which will be appraised by visiting the sites, considering where appropriate any complaints to learn from experience.

25.2 The Council is working towards a more systematic way of learning lessons from a sample of past planning decisions and outcomes.

26. HOSPITALITY

26.1 ***Councillors and Officers are advised to treat with extreme caution any offer or gift, favour or hospitality which is made to them personally.***

26.2 Councillors should also be very cautious about accepting gifts and hospitality. The Model Code requires any members receiving any gift or hospitality, **in their capacity as members**, over the value of £50, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the Council. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.

26.3 Similarly, officers, during the course of carrying out their duties, officers may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible. Councils should provide a hospitality book to record such offers whether or not accepted. This book should be reviewed regularly by the Council's Monitoring Officer. The requirement to register any such hospitality is likely to be a feature of the statutory code of conduct for employees.

26.4 The presumption should be that any gift is normally refused.

## **APPENDIX 1: OTHER GUIDANCE**

### **FROM RYEDALE DISTRICT COUNCIL**

Code of Conduct for Members  
Code of Conduct for Employees  
Council's Constitution

### **FROM OTHER ORGANISATIONS**

'Code of Professional Conduct' The Royal Town Planning Institute, June 1997.

'Guidance for Good Practice on Members' Interests', the Commission for Local Administration in England, April 1994.

'Probity in Planning', Local Government Association, April 2013

'The Role of Elected Members in Plan Making and Development Control', RTPI, 1997.

'Planning Authorities and Racist Representations', RTPI, July 1996.

## APPENDIX 2: DUTIES AND SANCTIONS

### 1. DUTIES OF MEMBERS

In determining applications, the Area Planning Committee and Policy and Resources Committee are not bound to follow the Officer's recommendation contained in a report. The relevant Committee should form its own views as to whether permission should be granted. However, this should not be interpreted as meaning that there are no possible grounds for challenge in the Courts, by the Ombudsman or some other external agency whatever Members do for example in approving applications contrary to Officer's recommendations, National and Development Plan Policy.

Members of the Local Planning authority have the following duties:-

- (i) Members must at all times act within the law;
- (ii) The overriding duty of Members is to the whole community, not to individual applicants. For example, the avoidance of sporadic development in the open countryside is in the interests of the whole community;
- (iii) Members have a statutory duty when determining planning applications to have regard to the provisions of the development plan where material to the application and to any other material considerations (Section 70 of the Town & Country Planning Act 1990).
- (iv) Members have a statutory duty to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004).
- (v) Members have a statutory duty when determining applications for listed building consent to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses: Section 16 of the Planning (Listed Building and Conservation Area) Act 1990.
- (vi) Members have a statutory duty when considering whether to grant planning permission for development which affects a listed building or its setting, to have

special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest: Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- (vii) Members have a statutory duty when determining planning applications in respect of buildings or other land in a conservation area, to pay special attention to the desirability of preserving or enhancing the special character or appearance of the area: Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (viii) Members have a statutory duty when determining planning applications which affect land in an Area of Outstanding Natural Beauty, to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty: Section 85 of the Countryside and Rights of Way Act 2000.

## 2. SANCTIONS AGAINST LOCAL PLANNING AUTHORITIES AND MEMBERS

Sanctions against Local Planning Authorities and Members are necessary because duties without sanctions would be potentially unenforceable. This part of the code briefly examines the remedies available to aggrieved persons who consider that the Council has acted unreasonably or unlawfully in making a planning decision and the implications these actions may have for the Council and Members.

The consequences of an unlawful or unreasonable planning decision are that the Council and Members would become subject to the scrutiny of the following external agencies:-

### (2) EXTERNAL AUDITOR

The external auditor may take action under the Audit Commission Act 1998. The external auditor may under section 17 make an application for a declaration that an item of account is contrary to law. The external auditor may also make a report under section 8 (reports in the public interest);

Four extraordinary headings of expenditure which could arise from decisions of the Planning Committee are:

- (a) an ombudsman finding of maladministration and injustice giving rise to recommendations for remedial action and financial recompense;
- (b) costs of litigation and award of costs following an application for Judicial Review in the High Court;
- (c) costs of local public inquiries, including possible award of applicants' costs following use of Secretary of State's call in powers;
- (d) costs of local public inquiries together with landowner's costs and possibly substantial compensation payments following actions by the Secretary of State for revocation, modification or discontinuance.

(3) **LOCAL GOVERNMENT OMBUDSMAN**

Aggrieved individuals who consider that they have been unfairly treated by the Council may refer their complaint to the Local Ombudsman for investigation to see if they have suffered injustice caused by maladministration.

Examples of maladministration would include:-

- (a) failure to follow a Council's agreed policies, rules or procedure;
- (b) failure to have proper procedures; bias or unfair discrimination;
- (c) failure to give due weight to Officer's recommendations and National Policy coupled with a failure to give and record clear and convincing planning reasons for approving a planning application where a planning application for substantially the same development has previously been refused;
- (d) taking into account irrelevant matters, allowing them to outweigh important planning considerations and failing to take fully into account Government guidance on personal circumstances.

If, after investigation, it is found that injustice has been caused by maladministration, the Ombudsman's report will contain recommendations as to what action the Council ought to take, which may include the payment of compensation.

The powers of the Local Government Ombudsman are contained in the Local Government Act 1974.

(4) **JUDICIAL REVIEW**

If an aggrieved individual or group of individuals believe that the Council's planning decision is wrong in law, they can make application to the High Court for Judicial Review of the decision, which might result in the planning decision being quashed.

In considering an application for Judicial Review the Court has regard to the following factors:-

- (a) whether the Council determined the planning application in accordance with the Development Plan or other material considerations;
- (b) whether the Council has taken into account an irrelevant consideration;
- (c) whether the Council has failed to take into account a relevant consideration;
- (d) whether there is evidence to suggest that if the Council has taken into account all relevant considerations it could not reasonably have taken the decision it arrived at;
- (e) whether all required procedures had been followed or there had been any procedural unfairness.

If the plaintiff succeeds on an application for Judicial Review, the planning decision may be quashed. In such circumstances it would be normal for the costs of the plaintiff's action to be awarded against the Council.

(5) **THE “CALL IN” POWERS TO THE SECRETARY OF STATE**

The Secretary of State has call in powers which can be exercised where a Council appears to be making inconsistent decisions which are seriously in conflict with National and Development Plan Policy. Planning applications called in by the Secretary of State, usually require a local public inquiry to be held, a part of the costs of which may be incurred by the Local Planning Authority. This power is contained in Section 77 of the Town & Country Planning Act 1990.

(6) **THE POWERS OF THE SECRETARY OF STATE TO REVOKE OR MODIFY A PLANNING PERMISSION**

Where planning permission has already been granted by the Council, the Secretary of State has powers to revoke or modify planning permission, or to require a discontinuance of a land use. This power is used if the original decision is judged to be grossly wrong. Cases giving rise to intervention include those where some important wider planning objective is at stake, such as protection of fine countryside.

Cases involving revocation and modification almost invariably require a local public inquiry before the Secretary of State's decision is confirmed. In addition to costs falling on the Council for the inquiry, where a planning permission is revoked or modified, there would be a liability for compensation to those with an interest in the land to be paid by the Local Authority.

The most recent example of this power being exercised is the Secretary of States decision to revoke a planning permission for a superstore in Alnwick. The supermarket group Safeway is demanding more than £4.6 million compensation from Alnwick District Council, which is the third smallest district council in England. The Secretary of State concluded that Alnwick District Council was grossly wrong to grant planning permission for a supermarket on the grounds inter alia that it was contrary to national planning guidance and structure and local plan policies.



**APPENDIX 3: THE DECISION MAKING PROCESS - “WEIGHING” MATERIAL CONSIDERATIONS**

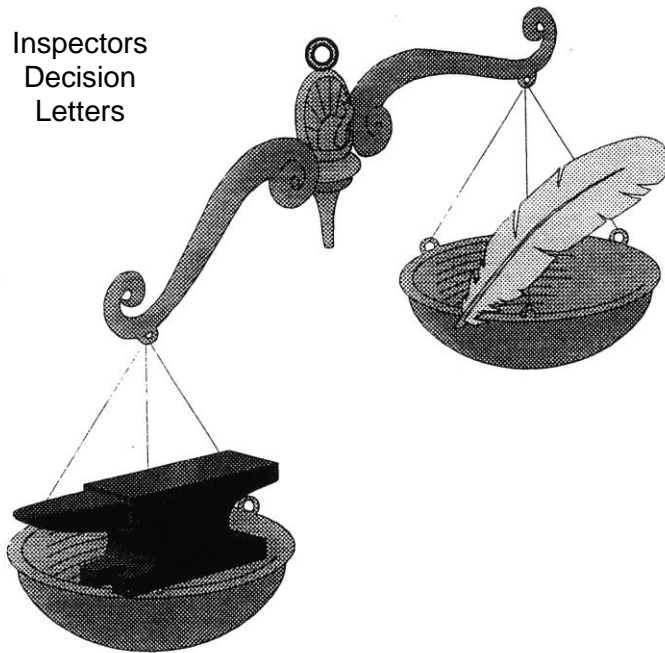
THE DETERMINATION OF PLANNING APPLICATIONS  
“WEIGHING” MATERIAL CONSIDERATIONS IN REACHING A DECISION

REFUSAL

National Policy

Structure and  
Local  
Plan Policy

Inspectors  
Decision  
Letters



APPROVAL

Personal  
Circumstances

“Security”

THIS VISUAL REPRESENTATION  
IS FOR ILLUSTRATIVE

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## **RYEDALE DISTRICT COUNCIL**

*Advice from*

This note is produced to help explain how a District Councillor acts in respect of your enquiry about planning issues.

Thank you for asking me about your case. I will do all I can to see that the matter is dealt with fairly, and as quickly as possible.

One of my roles as your “Ward Representative” - ie as your elected Councillor - is to listen, and to assist you through the necessary processes. The planning process is very complex and involves consulting many different people. Their views may not coincide.

The Council has adopted planning policies after wide public consultations, and your views on the matter you have raised will be considered with those policies, as important factors.

If all the consultations and comments agree about a planning issue and it remains uncontroversial, it is likely that a planning decision will be issued by the Officers, under powers delegated by the Council.

Where there is conflict, the Officers will make recommendations to the Planning Committee.

As a District Councillor, I am able to attend the Planning Committee for the Ward I represent and speak on an item which is reported if I am a Member of the Planning Committee.

If I have a professional personal interest, which must be declared, I will put you in touch with another Councillor who can assist you.

*It is not possible for me to give you any commitment for support until I have heard all the facts, and if this is a contentious matter this is unlikely to be until I am given all the information in the report at the Committee meeting.*

Please note that I may be approached by others with a different point of view to yours and, after I have weighed up all the facts, I may not wish to speak in favour of your point of view.

You are encouraged to put your views in writing addressed to the Council’s Head of Planning so that all Councillors will know your views in the Committee report.

Whatever my personal opinion, I respect your right to yours, and I shall endeavour to ensure that your view is clearly understood.

## APPENDIX 5: EXAMPLES OF DECLARATIONS OF INTEREST

The following are examples of cases (from other authorities) considered by the Local Government Ombudsman:-

- (i) Discussion of planning applications at political group meetings.

In this case the Ombudsman commented:

*“The use by the majority group of party discipline to determine planning applications was also maladministration. Members have to decide these matters on facts and material planning consideration. It is inappropriate to establish party policy on whether facts exist and on what weight should be attached to them”.*

- (ii) Voting by member who was a life member and season ticket holder of a football club.

The member declared an interest but did not withdraw from the meeting. This amounted to maladministration.

## APPENDIX 6: WHICH TYPES OF APPLICATION ARE DELEGATED?

### HEAD OF PLANNING

The matters listed below are delegated for decision/determination to the Specialist Services Lead (Head of Planning)

#### (iv) PLANNING COMMITTEE PROTOCOL

This Planning Protocol is intended to provide a guide to the exercise by the Head of Planning of delegated powers in relation to the Planning and Listed Building functions.

This Protocol comprises two elements showing the division of responsibility between the Planning Committee and the Specialist Services Lead (Head of Planning):

- (i) a Process Map; and
- (ii) text intended to provide a plain English guide to terminology.

This Protocol should be read in conjunction with the delegation scheme for the Head of Planning.

#### **Planning Applications Process Map**

Committee Decisions	Delegated decisions
Major Development Applications	Major Development Applications
<ul style="list-style-type: none"> <li>• All major category applications eg more than 9 dwellings, more than a hectare, commercial applications more than 1000m<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The refusal of major applications on the grounds of inadequate or incomplete information.</li> <li>• The refusal of major applications which are repeat applications of the same or similar proposals which have previously been refused by the Local Planning Authority within the preceding 12 months.</li> </ul> <p style="text-align: center;">BVPI target 60% in 13 weeks 10-12 applications per year in Ryedale about 1% of total applications</p>
Minor/Other Applications	Minor/Other applications
<ul style="list-style-type: none"> <li>• Approvals where more than one objection with reasons raising <b>material planning considerations</b> is received. <b>(1)</b></li> <li>• Approval recommendations which would be contrary to policies in the Local Plan.</li> <li>• All applications where a <b>clear and convincing request (2)</b> for referral to Committee based</li> </ul>	<ul style="list-style-type: none"> <li>• All approvals where there are no objections to the proposal</li> <li>• All approvals where <b>non material planning objections (5)</b> have been received</li> <li>• All approvals where plan revisions and or appropriate conditions are <b>judged (6)</b> to address third party objections.</li> </ul>

<p>on material planning considerations is received from a <b>Council Member (3)</b></p> <ul style="list-style-type: none"> <li>• All applications submitted by Members of the Council; Members of staff or other close relative. The Councils own applications.</li> <li>• Refusal recommendations where there is a <b>clear conflict of opinion (4)</b> with parish/town council or third parties in relation to <b>material planning considerations</b>.</li> </ul>	<ul style="list-style-type: none"> <li>• Approvals where parish/town council and/or single third party objections with reasons are received but where there are no <b>public interest issues (7)</b> involved.</li> <li>• All refusals where there is no <b>explicit support (8)</b> for the proposal from parish/town councils and or third parties.</li> <li>• All refusals where the decision is based on <b>Inadequate information/quality of information (9)</b>.</li> </ul>
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## Explanatory Notes to the Planning Protocol

### 1. Material planning consideration – Point 4.3/4 Planning Code of conduct –

Section 70 of the Town and Country Planning Act 1990, provides that Members have a statutory duty when determining planning applications, to have regard to the provisions of the development plan where material to the application, and to any other material consideration. The starting point for decisions on planning applications is the development plan. Section 38(6) Planning & Compulsory Purchase Act 2004 says that planning decisions must be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of:

- The Ryedale Local Plan (2002);

For the purposes of Section 119 and Schedule 8 of the Planning & Compulsory Purchase Act 2004, the transitional arrangements are that the following plans:

Ryedale Local Plan (Adopted 2002) incorporating Selective Alteration No1 (Adopted 2004)

have effect for a transitional period as from 28 September 2004.

Other material planning considerations include:

- Government guidance contained, for example, in the National Planning Policy framework, Circulars and Ministerial announcements;
- planning briefs, planning policy statements and other 'supplementary planning documents approved by the Council following public consultation;
- statutory duties in relation to conservation areas and listed buildings;
- representations made by statutory consultees and other people making comments, to the extent that they relate to planning matters;
- the environmental qualities of the surrounding area or the visual character of a street (this includes the scale, design and materials of buildings and the landscaping of a site);
- the amenity and privacy of dwellings;
- the character of an area in other senses (in terms of noise or other forms of pollution);
- road safety (both directly as in the case of a dangerous access or indirectly in terms of car parking and traffic generation);

- public services, such as drainage;
- public proposals for using the same land; and
- legitimate planning gain/community benefit.

**2. Clear and convincing request** – A written request in writing to the Specialist Services Lead (Head of Planning) within 21 days of the date of issue of the weekly application list.

**3. Council Member - This point applies to any District Council Member**

**4. Clear conflict of opinion** – ie where parish or town councils consultees, members of the public, elected Members or other organisations recommend support or approval with reasons.

**5. Non material planning objections** – see Planning Code of Conduct point 4.5. The objections with reasons should be made in writing to the Specialist Services Lead (Head of Planning).

There is much case law on what are, and are not material planning matters. ***Planning matters must relate to the use and development of land.*** For example, the following are ***not*** normally planning matters and ***cannot be taken into account in planning decisions:***

- personal and financial considerations;
- private property rights and boundary disputes;
- covenants;
- effects on property and land values;
- developers' motives;
- public support or opposition, unless it is founded on valid planning matters;
- the fact that development has already begun (people can carry out development at their own risk before getting permission and the Council has to judge development on its planning merits);
- the fact that an applicant has carried out unauthorised development in the past;
- "trade objections" from potential competitors;
- moral objections such as activities likely to become addictive, for instance betting shops, lottery kiosks or amusement arcades;
- the belief that an application is submitted by an owner with the intention of selling the property at an enhanced value;
- the loss of an attractive private view (for instance when development is proposed on the opposite side of the road to or at the rear of an objector's house);
- the fear that an objector's house or property might be devalued;
- the fact that the applicant does not own the land to which his application relates (this can be overcome by agreement with the owner and, if it is not, the development cannot happen);
- the fact that an objector is a tenant of land where development is proposed; any consequences between landlord and tenant are unrelated to the application;
- allegations that a proposal might affect private rights, eg restrictive covenants; property maintenance; ownership and private rights of way disputes; boundary disputes; (such considerations are legal matters on which objectors should consult their own solicitor or advisor since it will not be possible for Officers of the Council to advise as to such rights);
- arguments of a personal kind in relation to the circumstances of the applicant. It is essential that Members are aware that planning permission goes with the land. The Government inquiry into planning in North Cornwall ('Inquiry into the Planning System in North Cornwall - DoE 1993') makes it plain that personal preferences are not reasons for granting planning permissions. Personal circumstances may, very exceptionally, have a place in the system. Therefore, information about the applicant should not be material to

the consideration of a planning application in the vast majority of cases, and personal circumstances cannot therefore, in general, outweigh planning considerations.

**6. Judged** – the case officer in consultation with the Specialist Services Lead (Head of Planning) will judge whether the revisions or conditions address the third party objections.

**7. Public interest issues** – Development Control is about controlling development in the public interest ie a householder extension at the rear of the property, not perceived outside the site is an example of an application of limited impact with little or no public interest. Whereas an application for new dwellings in a prominent site readily visible from an adjacent footpath would have considerable public interest issues.

**8. Explicitly support** – A “No comments”, “No Objection”, support/approval with no reasons raising **material planning considerations** are responses which are not considered to be explicit support for an application.

**9. Inadequate information/quality of information** – The Case officer in consultation with the Specialist Services Lead (Head of Planning) will assess the adequacy of the information. An example would be poor quality of plans or inaccurate plans.

**10. Conflict with local plan** – ie the erection of a new dwelling in the countryside outside a development area or failure to satisfy all the criteria of a Policy in the Local Plan.

**11. Major development** – is defined by Article 8 (7) of the Town and Country Planning (General Development Procedure Order) 1995 as development involving:

- (a) the provision of dwellinghouses where -
  - (i) the number of dwellinghouses to be provided is 10 or more; or
  - (ii) the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within paragraph (a) (i);
- (b) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (c) development carried out on a site having an area of 1 hectare or more.

## **APPENDIX 7**

### **THE GENERAL PRINCIPLES**

#### Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

#### Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

#### Openness

5. Members should be as open as possible about their actions and those of their Authority, and should be prepared to give reasons for those actions.

#### Honesty

6. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

#### Leadership

7. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.