

Advice Note to Councillors

Dealing with Representations in advance of Planning Meetings

The Councillors Code of Conduct (Section 7) details the requirements placed on Councillors on – Taking Decisions on Quasi-Judicial or Regulatory Applications. The Code provides specific advice on dealing with representations and ensuring the Councillors making decisions act in a way that is fair and impartial.

Fairness and Impartiality

7.2 On questions relating to such matters on which councillors have to make individual decisions, you may have to take account of different points of view or make decisions based on specified statutory criteria.

7.3 In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

Representations

7.13 Where you will be participating in making the appropriate decision, you should not organise support for, or opposition to, or lobby other councillors or act as an advocate to promote a particular recommendation on a planning application, on a planning agreement, on taking enforcement action, or on a review by the Local Review Body.

7.14 You are not precluded from raising issues or concerns on any of the matters associated with the application with the planning officers concerned. Indeed, a councillor may well have an important contribution to make in respect of an individual planning application or on what the Council should include in a planning agreement. It is entirely appropriate for councillors, including those who will have a decision making responsibility, to make known to planning officers what representations from constituents and prospective developers they have received on a planning application, to attend public meetings/events (including those relating to statutory pre-application consultation) and to assist constituents in making their views known to the relevant planning officer. This applies to those councillors with a decision making responsibility, provided that at no time does the councillor express a "for" or "against" view by advocating a position in advance of the decision making meeting (other than in respect of the circumstances set out in paragraphs [7.8](#) and [7.18](#)).

7.15 If as part of the decision making process you wish to make representations on behalf of constituents or other parties you may do so providing:-

(i) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so,

(ii) you declare your interest in the matter; and

(iii) after making those representations you then retire from the meeting room.

Advice

- ⌚ Councillors are advised that, under the terms of the Code, they are able to attend meetings (including pre-application consultation meetings) with potential applicants before an application is submitted to the Council. In these instances the meeting should also be attended by an officer(s) of the Council;
- ⌚ If Councillors are approached to attend a private meeting or presentation held by applicants, objectors or supporters after an application is submitted but before the application is determined, Councillors are advised not to attend such meetings if they wish to take part in the determination of the planning application. Attendance at a private meeting could create the perception that the Councillor has already formed a view on the merits of the application prior to the planning Committee meeting and that the planning process is neither open nor transparent. If Councillors agree to attend a private meeting arranged by one of the parties in an application process, they need to be aware that their actions could be interpreted as unfair (i.e. prepared to listen to representations from just one party) and they risk precluding themselves from taking part at the planning Committee that determines the application.
- ⌚ Councillors are advised that, under the terms of the Code, they are able to attend public meetings (both before and after an application is submitted). However, Councillors should not express a view either for or against the application either at that meeting or in advance of the planning Committee meeting, so as to avoid the perception that the Councillors have already formed a view on the merits of the application;
- ⌚ If, prior to the determination of a planning application, Councillors wish to express a view either for or against the planning application, then they are not permitted to take part in the determination of the planning application and should leave the Committee meeting having declared their interest;
- ⌚ Councillors may only make representations on a planning application at a Committee meeting on behalf of constituents or other parties, if the application is subject to a pre-determination Hearing¹. This is to ensure that equal opportunity is provided to all other parties wishing to make representations to do so. In these circumstances the Councillors will require to declare an interest and, after making the representations, the Councillors concerned will leave the meeting and not take part in the determination of the planning application.

¹ Members are reminded that in respect of applications for which a pre-determination Hearing is not required under the Town and Country Planning (Scotland) Act 1997, a decision as to whether the committee responsible for determining the application wishes to hold a discretionary pre-determination hearing is a decision for that committee. Councillors who may wish to make representations on a planning application on behalf of constituents or other parties under paragraph 7.15 of the Code should therefore not seek to lobby the responsible committee to agree to hold a pre-determination Hearing. Any such lobbying could, itself, be perceived as a breach of the Councillors' Code of Conduct.

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