

## GUILDFORD BOROUGH COUNCIL

### PROBITY IN PLANNING - LOCAL CODE OF PRACTICE

#### General Context

Councillors must ensure that their conduct accords with the requirements of the Councillors' Code of Conduct and Protocol on Councillor/Officer Relations included in Part 5 of this Constitution. The Code makes clear that, in taking public office, councillors must accept constraints on their behaviour. It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.

Councillors are required to adhere to the following general principles prescribed by the Localism Act 2011, as attached to the Councillors' Code of Conduct:

- **Selflessness.** Holders of public office should act solely in terms of the public interest. .
- **Integrity.** Holders of public office must avoid placing themselves under any obligation to people or organisations that try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves their family or their friends. They must declare and resolve any interests and relationships.
- **Objectivity.** Holders of public office must act and take decisions impartially fairly and on merit using the best evidence and without discrimination or bias.
- **Accountability.** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness.** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty.** Holders of public office should be truthful.
- **Leadership.** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The planning system involves taking decisions about the use and development of land. It is not an exact science and relies on informed judgement within a firm policy context. It is important that all concerned (applicants, objectors, practitioners, officers, councillors and the general public) have complete confidence in the integrity and transparency of the system. This is supported by central government advice and by the Local Government Association.

This local code of practice has been prepared to reflect government guidance within the local context of Guildford. It is intended as a guide to councillors to ensure that decisions are taken impartially, without bias and are well founded. The guidance is divided into three sections:

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1. General Roles and Conduct
2. Lobbying and Negotiations
3. Decision-Making

### **General Roles and Conduct**

#### Role of Councillors

Councillors on the Planning Committee sit as a non-judicial body, but act in a semi-judicial capacity, representative of the whole local community in making decisions on planning applications. They must, therefore:

1. act fairly, openly and apolitically;
2. approach each planning application with an open mind, avoiding pre-conceived opinions;
3. carefully weigh up all relevant issues;
4. determine each application on its individual planning merits;
5. avoid undue contact with interested parties; and
6. ensure that the reasons for their decisions are clearly stated.

The above role applies also to councillors who are nominated substitutes on the Planning Committee. Where a councillor, who is neither a member of, nor a substitute on the Planning Committee, attends a meeting of the Committee, he or she is also under a duty to act fairly and openly and avoid any actions which might give rise to an impression of bias or undue influence.

Equally, the conduct of members of any working party or committee considering planning policy must be similar to that outlined above relating to the Planning Committee.

#### Role of Planning Officers

Planning officers advise councillors on planning policy and planning applications. They will:

1. provide professional, objective and comprehensive advice;
2. provide a clear and accurate analysis of the issues;
3. advise on the development plan and other material considerations;
4. give a clear recommendation; and
5. implement the Committee's/Council's decisions (including those made by officers under powers delegated to them).

#### Role of the Council Solicitor and Monitoring Officer

The Council Solicitor and Monitoring Officer will give clear and objective advice to councillors as necessary on legal issues arising out of the conduct of the Committee's functions, the implementation of its decisions and proposed courses of action and will implement the

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Committee's/Council's decisions so far as they require the completion of any legal agreements, institution/defence of any proceedings, issuing of notices etc.

The Democratic Services Manager will also give clear and objective advice to councillors as necessary on administrative issues arising out of the conduct of the Committee's functions.

### Disclosure and Registration of Interests

It is very important that councillors disclose their interest in particular schemes, including indirect interests. This requirement relates to individual planning applications and also planning policies and proposals which are being developed in development plans, supplementary planning guidance or development briefs. There is clear guidance in the Councillors' Code of Conduct on what constitutes an 'interest'.

Interests must be disclosed by councillors before the Committee discusses the item concerned. Such disclosures are usually taken at the start of the meeting and are recorded in the minutes.

It is also important for officers to disclose interests in writing to their service leader, if they consider that those interests might affect their objectivity.

The Council has a publicly available register of councillors' interests, a copy of which is also available for inspection on the Council's website:

<http://www.guildford.gov.uk/councillorsearch>

The Council also holds a register of officers' interests, which is not available to the public.

The Councillors' Code of Conduct also sets out rules on acceptance of gifts and hospitality by councillors. There is also guidance for officers and a hospitality register is held within directorates.

### Monitoring Feedback and Complaints

The Council has drawn up and published a guide to service standards, which includes an explanation of how complaints about any services may be made. Copies of the guide and comment forms are available from the Customer Services team.

## **Lobbying and Negotiations**

### Planning Applications

It is common for applicants, other interested parties (such as neighbours) and other councillors to wish to discuss a proposed development with members of the Planning Committee before and during the consideration of a planning application.

Whilst such discussion can help councillors' understanding of the issues and concerns associated with an application, it is important that councillors avoid compromising their positions before they have received all the relevant information.

The Local Government Association's paper "Probity in Planning" recognises lobbying as a part of the political process. However, the paper states that care and common sense needs to be exercised, such that councillors' impartiality and integrity are not called into question in

the decision-making process.

Councillors and, in particular, those sitting as the Planning Committee need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in a transparent, open, reasonable and fair manner.

In order to make their position clear, councillors should:

- Make a note of any formal meetings with an applicant or any other interested party, whom if possible a councillor should avoid meeting alone, which will be publicly available on the planning file and inform those present that this will be done.
- Direct objectors and other interested parties to planning officers who will include reference to their opinions (where relevant) in their report to the Planning Committee.
- Avoid making it known in advance of the Committee meeting whether they support or oppose the proposal.
- Restrict pre-application advice to procedures and policies only.
- Avoid placing pressure on officers to give a particular recommendation. (If a councillor is concerned about the recommendation or the advice a case officer is giving, the Director of Planning and Regeneration must be informed immediately.)

If a meeting with an applicant, objector or potential applicant is undertaken, councillors should restrict their comments to policies and procedures that may be involved in coming to a decision. Councillors may wish to involve a colleague or planning officer in such meetings. It is essential that councillors do not become involved in the negotiation process, but direct applicants to the case officer to carry out the relevant negotiations.

#### Pre-Application Discussions

Pre-application discussions with potential applicants may take place, but unless the discussion simply relates to policies and procedures, such meetings should always involve officers, who can give professional planning advice. Such discussions can be extremely useful to all concerned and can save a great deal of wasted effort (on both sides) as well as contributing to a higher quality development. To avoid any misunderstanding, the following guidelines should be followed:

- Councillors will only be involved (primarily for fact-finding) in pre-application discussions on major schemes when a specific forum has been arranged by officers for that purpose.
- In complex or contentious cases, at least one planning officer will be present.
- A meeting note will be taken by planning officers and placed on the relevant file. In some cases, this might be a previous planning file, in others it might be the general file for the area. Some pre-application discussions are undertaken on a confidential basis and these will be placed in a confidential envelope on the appropriate file.
- It will be made clear that the planning officers are giving provisional views (based on the development plan and up-to-date government guidance); that no decisions are

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being made and that decision-making rests with councillors at Planning Committee or by the relevant officer under delegated powers.

- Similar issues apply to the development of planning policy. There may be occasions where owners, developers or other interested parties will wish to discuss with councillors aspects of emerging policy in the development plan and other policy documents. This may be as promoters of a particular development or objectors to specific proposals. In such circumstances, councillors should:
  - avoid as far as possible meeting a promoter of a development alone;
  - avoid making it known in advance of the Committee or similar meeting whether they support or oppose the proposal;
  - restrict advice to procedures only;
  - direct objectors or promoters of schemes to the planning officers so that they can be included in the appropriate report;
  - Make a note of any relevant meeting and copy to the planning officer(s).

### Decision-Making

#### Planning Applications

All planning applications are determined either by the Planning Committee or delegated to officers. It should be noted that irrespective of the type of development, applications submitted to the Council by councillors or officers will be determined by the Planning Committee.

Under the Council's Constitution, there is the ability to refer planning applications to full Council for consideration. In those circumstances, this code of practice would equally apply to consideration by the full Council.

There are four aspects, which are relevant to this code:

#### (i) Officer Reports

Officer reports are key to decision-making and make a significant contribution to consistency and confidence in the system. Planning reports should:

- be accurate and comprehensive and include the substance of objections and the views of people who have been consulted;
- be relevant and include a clear exposition of the development plan, site history and all other material considerations;
- have a written recommendation of action with a technical appraisal which clearly justifies the recommendation; and
- if the recommendation is contrary to the development plan, the material considerations which justify this must be clearly stated.

(ii) Public Speaking

The Third Report of the Committee on Standards in Public Life (The Nolan Report) recommends as best practice that there should be opportunities for applicants and objectors and other interested parties, such as parish councils, to make representations at Planning Committee. In implementing public speaking, there should be clear protocols identifying who is allowed to speak, including provisions as to whether parish councils or third party objectors are allowed to speak. In addition, in order to promote equity, the time allowed for these presentations should be identical. Guildford already has such arrangements in place. Copies of the scheme have already been supplied to councillors, but additional copies are available from the Planning Committee Manager, Sophie Butcher (01483 444056).

(iii) Site Visits

There is need for clarity of purpose with respect to site visits. They can be useful to identify features that may otherwise be difficult to appreciate.

When appropriate, formal visits will be made by the members of the Planning Committee to site(s) in respect of which there are application(s) under consideration by the Committee. Such Committee visits will only be authorised by the Planning Committee and will be at an agreed time. They should only be held in circumstances in which it is not possible for councillors to make an informed decision without seeing the site for themselves. The Committee minutes will show the planning reasons for the decision to hold a site visit. Site visits are generally not appropriate in cases where purely policy matters are at issue. The applicant will be notified in advance in writing of the time and date of the visit. A planning officer and the Planning Committee Manager will be in attendance. Site visits are:

- fact finding exercises.
- not part of the formal consideration of the application and, therefore, public rights of attendance and speaking by applicants and objectors do not apply. There will be no decision made by the site visit party. The Chairman of the Committee or his/her representative must maintain a firm control over the conduct of the site visit which, whilst not part of a formal meeting of the Planning Committee, must be conducted as a single meeting and in an orderly fashion. Councillors should not allow themselves to be addressed by individual parties.
- to enable officers to point out relevant features.
- to enable councillors to ask questions on site for clarification. However, discussion on the application will only take place at Planning Committee when all parties will be present.
- members of the public or applicants may not address the Committee at councillors' site visits.

The application the subject of the site visit will normally be reported to the next available Planning Committee meeting for formal decision.

(iv) Decisions Contrary to Officer Recommendations

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From time to time, members of the Planning Committee will disagree with the professional advice given by planning officers. In such cases, the planning reasons for rejecting an officer's recommendation will be clearly stated and recorded in the minutes. Where an appeal arises against such a decision, it is unlikely that the case officer will give evidence and, in some cases, consultants will be employed. Support will also be given to the relevant councillors in preparing evidence for the appeal and providing factual evidence.

### **(v) Councillor Representations on Appeals Against Planning Decisions**

Where a councillor wishes to support an appellant on any appeal against a Council decision on a planning matter, that councillor shall as a matter of courtesy give written notice of his or her intention to the Monitoring Officer and the appellant. Where the appeal is to be dealt with at an inquiry, the notice shall be delivered to the Monitoring Officer and the appellant normally not less than five working days before the start of the inquiry.

In deciding whether to make representations on an appeal, councillors should consider very carefully beforehand whether there could be any allegation that they are in breach of this local code or any other provisions in the Councillors' Code of Conduct. Councillors are reminded that their over-riding duty is to the whole local community.

Councillors proposing to support an appellant at an appeal must in addition make it clear to the planning inspector that they are appearing in their personal capacity and not as a spokesman for the Council.

### **Planning Policy**

Similar principles to the above apply to decisions on development plans, supplementary planning guidance or other policy documents.

There may be occasions where sub-groups of councillors are formed to develop planning policy. In particular, it is now established practice to establish sub-groups to take forward the development plan. Where such groups are formed, it is important that the remit is established from the outset. In particular, it needs to be resolved whether the meetings and papers will be public, the political composition of the sub-groups and the relationship with the Leader/Executive and parent committee. This will establish whether the remit of the sub-group is to advise officers in the preparation of policy documents or whether the sub-group is empowered to make formal recommendations to the Leader/Executive and/or parent committee.

### **Applicability of the Code**

This code of practice is intended to be a guide for councillors and others (including members of the public) as to the conduct expected of all parties on matters relating to planning in the Borough.

Members of the Planning Committee and others to whom this code applies must make their own judgments as to its application to specific planning matters, including individual planning applications. In most cases, its applicability will be clear. If any councillor is in doubt, he or she may seek advice from the Monitoring Officer. However, the final decision must be for the councillor to determine.

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A breach of the code is a serious matter and, although usually not amounting to a breach of the criminal law, may incur an adverse report from the Local Government Ombudsman and/or action under the Councillors' Code of Conduct.