

# Planning Good Practice Guidance for Members



## **When this Guidance applies**

This Guidance is prepared for the assistance of Members in dealing with planning matters; this includes decision making meetings of the Council where planning functions of the planning authority are exercised and less formal occasions such as meetings with officers or the public or consultative meetings. It applies equally to planning enforcement matters and site specific policy issues as it does to planning applications.

### **REMEMBER:**

If you have any queries about this Guidance, the Members' Code of Conduct or your own circumstances you should seek advice from the Monitoring Officer or Deputy Monitoring Officer as soon as possible.

## **Aims of this Guidance**

- to advise and guide Members in dealing with planning related matters
- to protect members from unwarranted criticism and challenge
- to inform members of the public of the standards promoted by Craven District Council in connection with the performance of planning functions
- to ensure that in the planning process there are no grounds for suggesting the decision is affected by biased partial or not well founded in any way

### **REMEMBER:**

If you fail to comply with this Guidance you may put the Council at risk of maladministration or Judicial Review proceedings. You also risk being named in a report to the Standards Committee and if the failure is also a breach of the Members' Code of Conduct a complaint being made to the Monitoring Officer.

## **Relationship to the Members' Code of Conduct**

Craven District Council has adopted the Members' Code of Conduct which sets out the general principles and obligations of Members. The Members' Code of Conduct also deals with the issue of declaration of disclosable pecuniary interest and other interests. This Guidance is intended to explain and supplement the Members' Code of Conduct in the context of planning control.

If you have an interest under the Members' Code of Conduct you **MUST NOT**:

- participate or give the appearance of trying to participate in the making of any decision on the matter
- get involved in processing the application
- seek or accept any preferential treatment, or place yourself in a position that could lead the public to think that you are receiving preferential treatment because you are a Councillor. This includes using your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so

You **MUST**:

- disclose the existence of your interest in accordance with the Members' Code of Conduct. **Appendix 1** Interests Table will help you determine what action you need to take in relation to speaking, voting and attending Planning Committee
- consider using a Planning Agent in relation to any application you have an Appendix A; Disclosable Pecuniary Interest in
- contact the other Ward Member to make them aware that you are unable to take part in the matter in order that they can represent the Ward's view
- seek advice if in doubt

**REMEMBER:**

The Members' Code of Conduct it must always be complied with. In the unlikely event that there is any conflict between this Guidance and the Members' Code of Conduct the Code must be complied with.

### **Key purpose of the planning regime**

The purpose of development control is to ensure that the right development happens in the right place at the right time, benefitting communities and the economy. It plays a critical role in identifying what development is needed and where, what areas need to be protected or enhanced and in assessing whether proposed development is suitable.

The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

### **Role as a Member**

It is the role of Members of Planning Committee to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

All Members have a role to play in representing the views and aspirations of residents in planning and where planning applications affecting their ward are being considered.

## Predetermination and Bias

**Predetermination** and **bias** is where a Member's mind is closed or is reasonably perceived to be closed, to the merits of any arguments which differ from their own about a particular issue on which they are making a decision.

An example of predetermination or bias would be a Member stating "*Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the Committee.*"

Members of the Planning Committee must consider all of the information presented to them at the meeting and reach a decision based on the Development Plan and relevant material considerations. By doing so you will be able to demonstrate that you did not have a closed mind at the meeting and that the decision has been reached on a reasonable basis. The same principles apply when a matter concerns adoption of Development Plan documents.

If you are predetermined or biased in relation to a matter you **MUST NOT**;

- speak or vote on the matter unless you are a Ward Representative or if you are speaking as a member of the public in cases where the relevant meeting rules permit

If you are predetermined or biased in relation to a matter you **MUST**;

- consider leaving the room during the relevant debate to avoid the perception of influence, as a minimum you should move to the public gallery
- in cases where you are permitted to speak ensure that the Committee is aware of the capacity you are speaking in

### **REMEMBER:**

If you fail to follow these principles there is a risk that the lawfulness of the decision could be challenged by Judicial Review. If you have a predetermined or biased position should withdraw from that matter.

## Predisposition

**Predisposition** is where a Member has expressed an intention to vote in a particular way before a meeting but makes it clear that they are willing to listen to all the considerations presented at Committee before deciding on how to vote.

A Member will not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This means that a Member may be predisposed on a matter before it comes to Committee provided that they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting.

**REMEMBER:**

If you have made comments in other meetings or the press indicating your intention to vote in a particular way you must consider whether a reasonable onlooker with knowledge of all relevant facts would consider that you were biased.

**Dual hatted Member**

Dual hatted Members are Members who serve on two or more relevant authorities (for example, Members who are a District and Parish and/or Yorkshire Dales National Park Authority Councillor). Membership of the other relevant authority must be registered under Appendix B of the Members' Code of Conduct.

If a dual-hatted Member is taking part in a Planning Committee meeting and an issue under discussion **relates to or is likely to affect** that Member's other Authority, then the Member should apply the **Perception of Conflict test**.

Different factors will be relevant to each case when applying the Perception of Conflict test, however in general terms factors to consider may include;

- the nature of any representation made by the other Authority;
- the Member's position on the other Authority (for example, does the Member sit on the other Authority's Planning Committee or are they are Lead Member on the other Authority for an aspect relevant to the representation.);
- the role or purpose of the other Authority;
- any potential financial impact on the other Authority

Dual-hatter Members should also need to carefully consider the issue of **predetermination** and **bias**.

If a Member determines that they have an Appendix B interest after applying the Perception of Conflict test they should declare that interest, only speak on the matter if the public are allowed to speak, move to the public area and not vote on the matter.

**REMEMBER:**

Declarations of interest are always a matter for the individual Member. However, if you have any questions advice should be sought from the Monitoring Officer or Deputy Monitoring Officer.

## Lobbying

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, site allocation in a Development Plan or an emerging policy, will often seek to influence through an approach to their ward Member or to a Member of the Planning Committee.

Lobbying can lead to the impartiality and integrity of a Member being called into question unless care is exercised.

The rules in relation to lobbying do not prevent you from joining general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society.

### You **MUST NOT**:

- Accept gifts or hospitality from any person involved in or affected by a planning proposal;
- Excessively lobby fellow Members regarding your views
- Attempt to persuade other Members to decide how to vote in advance of the Planning Committee
- Decide how to vote or discuss how to vote on any application at any political group meeting or other meeting with a similar purpose
- Express to those attempting to lobby you a firm decision on how you will vote or view on the matter
- Lead or represent an organisation that has the primary purpose to lobby to promote or oppose planning proposals.

### You **MUST**:

- Explain to those attempting to lobby you that you can listen to what is said but you must keep an open mind
- Remember that your overriding duty is to the whole of the community
- Provide a copy of any lobbying material to the Planning Manager at the earliest opportunity
- Inform the Monitoring Officer if you feel you have been exposed to undue or excessive lobbying
- Declare any lobbying (for or against) at agenda item 4 ('declarations of interest') at each Planning Committee

## Contact with Applicants, Developers and Objectors

### You **MUST**;

- Refer anyone who approaches you for planning, procedural or technical advice to Officers
- Follow the rules on lobbying in relation to contact with applicants, developers and objectors
- Take notes of any contact
- Report to the Planning Manager any significant contact, this will ensure that a record is kept

on the planning file

- Ask the Planning Manager to arrange any necessary formal meetings with applicants, developers or groups of objectors. This will ensure that an Officer is present who can provide advice, record details for the planning file and report to the Planning Committee. It is anticipated that such meeting will be necessary only in exceptional circumstances.
- ask relevant questions, at planning presentations, to clarify your understanding of the proposal
- remember that planning presentations are not part of the formal planning process and are a form of lobbying

You **MUST NOT**;

- Agree to any formal meeting with applicants, developers or groups of objectors unless a Planning Officer is also attending or the meeting has been organised by Officers
- Attend a planning presentation unless an Officer is present and/or it has been organised by Officers

## Training

You **MUST**;

- Attend any planning training arranged by Officers. The training will be designed to extend your knowledge of planning law, regulations, procedures, codes of practice and the development plan to assist you in carrying out your role properly and effectively.
- Speak to the Planning Manager if you feel you require planning training
- Read any Planning Inspectorate decisions and updates that are sent to you by Officers
- Use the annual review as a training exercise



## **Pre Application discussions**

Pre-application discussions between a potential applicant and the Council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant. It should be clear from the outset that the discussions will not bind the Council to making a particular decision. By the very nature of such meetings not all relevant information will be available at the outset nor will formal consultations with interested parties have taken place.

The same considerations should apply as apply to any discussions which occur before a decision is taken.

You **MUST**;

- Ensure that Officers are present at any pre-application meetings
- Avoid being drawn into negotiations

## Referring matters to Planning Committee

The Development Control Scheme of Delegation sets out when applications will be delegated to Officers and when applications will be determined by the Planning Committee.

If a Member wishes to refer an application to Planning Committee the Member must follow the Scheme of Delegation (**Appendix 3**) and the Protocol (**Appendix 4**).

**You MUST;**

- Give reasons for referring an application to Planning Committee in the interests of openness and transparency
- Ensure that you send your request to [planning@cravenc.gov.uk](mailto:planning@cravenc.gov.uk) rather than the Case Officer
- Specify whether you consider that a site visit would have a clear and substantial benefit giving your reasons

## Site Visits

Site Visits can be an important part of the decision making process but should only be requested where the benefit is clear and substantial.

A Site Visit is only likely to be necessary if;

- the impact of the proposed development is difficult to visualised from the plans and any other supporting material including photographs taken by Officers
- the proposal is particularly contentious

### You **MUST**;

- Try to attend any site visits organised by the Council
- Ensure that information you gained from the site visit is reported back to Committee so that all Members have the same information
- Ensure that you treat the site visit as an opportunity to seek information in relation to the physical features of the site and to observe the site only
- Ask Officers at the site visit questions or clarification on matters relevant to the site inspection
- Listen to the Chairman's instructions and stay as one group

### You **MUST NOT**;

- Wander off; if you think another part of the site is important ask the Chairman to include that area in the site visit
- Get involved in conversations with members of the public or others attending the site visit
- Express your opinions or views on the proposals during the site visit
- Enter a site, not open to the public, to conduct your own site visit even in response to an invitation as this may give the impression of bias
- Allow the Site Visit to be used as a lobbying opportunity

### **REMEMBER**

The Members' Code of Conduct applies to Site Visits in the same way it applies to Committee. If you have an interest in the matter to be discussed at Committee you also have an interest at the Site Visit

## Planning Committee

### Use of electronic devices during Committee (such as ipads)

At Planning Committee iPads and other electronic devices need to be used with care common sense and respect. In particular, it is important that respect and courtesy is shown to others participating in the meeting and use of such devices should not give the impression to observers that a Member is not paying due attention at the meeting.

A copy of the Protocol for the use of electronic devices during Planning Committee is at **Appendix 2**.

#### **REMEMBER**

Not all information on the internet is accurate and as such it is important that Members verify information they wish to introduce to the debate.

### Officer Reports

Officer reports are prepared to provide Members with the information necessary to determine an application. The report will include:

- the substance of any objections and other responses received to the consultation;
- a clear assessment against the relevant development plan policies, National Planning Policy Framework (NPPF) and any other material planning considerations; and
- a recommendation on how the application should be determined.

It is important to remember that Officers are providing their professional opinion on an application. Officers are required to act in accordance with the Council's Code of Conduct for Officers and may be subject to professional codes of conduct such as the Royal Town Planning Institutes Code of Professional Conduct. As a result the Planning Officer's views, opinions and recommendations are presented on the basis of their overriding obligation of professional independence. This does not mean that the Planning Officers views, opinions and recommendations cannot be challenged and questioned by Members.

#### You **MUST**;

- Read the Officer report carefully before Committee
- Contact the Planning Manager if you have any questions regarding the Officer report

#### You **MUST NOT**;

- Contact the Officer and put pressure on them to change their recommendation

### Decision Making

Planning decisions must comply with the statutory framework, in particular decisions should be made in accordance with the Development Plan unless material considerations indicate otherwise.

Members may approve, refuse or defer an application at Committee. A matter should only be deferred where there is a clear reason and benefit of doing so, for example where during the debate it becomes clear that a site visit is necessary.

Where a Member proposes or seconds a decision that is against Officer recommendation they must give planning reasons for doing so.

**You MUST;**

- Come to meetings with an open mind
- Reach your decision only after due consideration of all the relevant information reasonably required
- Provide planning reasons for any decisions against Officer recommendation

**You MUST NOT;**

- Vote or take part in the debate on a proposal unless you have been present to hear the entire matter, including the Officer presentation

**Review of decisions**

A sample of implemented planning decisions will be reported to Planning Committee on an annual basis. The Planning Manager will also report to the Planning Committee annual statistics in relation to the performance of the Planning Department including appeals.

The essential purpose of this review process is to assist Planning Committee Members to refine their understanding of the impact of their decisions. The objective is to improve the quality and consistency of decision making in order to strengthen public confidence in the planning system.

**You MUST;**

- Fully engage with any such reviews as an important training and development exercise

APPENDIX 1: Members' Code of Conduct Interests Table

APPENDIX 2: Protocol for the use of electronic devices during Planning Committee

APPENDIX 3: Development Control Scheme of Delegation

APPENDIX 4: Development Control Protocol for requesting applications are referred to Planning Committee

APPENDIX 1: Members' Code of Conduct Interests Table

Type of Interest	Declare the interest?	Speak on the matter?	Vote on the matter?	Take Action
<b>Appendix A</b> (Disclosable Pecuniary Interests)	It is only necessary to declare what the interest is if it is not entered on your Register of Interests or if you have not notified the Monitoring Officer of the interest.	No	No	Leave the room
<b>Appendix B</b> (other Interests) <u>and</u> you are satisfied that the 'Perception of Conflict' test is met	Yes	Yes – If the public are also allowed to speak.  No – if the matter is discussed in exempt session.	No	Move to the public gallery
<b>Paragraph 15</b> (the matter relates to the financial interest of yourself, a friend, relative or close associate)	Yes (the nature of the interest)	Yes – If the public are also allowed to speak.  No – if the matter is discussed in exempted session.	No	Move to the public gallery

## APPENDIX 2: Protocol for the use of electronic devices during Planning Committee

*Interim/Voluntary protocol until Council policy comes forward for the use of use devices at all council meetings.*

### **Introduction**

The Council has recently issued iPads to Councillors. This protocol covers the use of iPads and other hand held electrical devices at planning committee.

Members are reminded that this protocol is in addition to the Code of Conduct.

### **Background**

Hand held electronic devises offer a wide range of uses including;

- Phone calls
- Texting
- Reading and sending emails
- Accessing twitter, facebook and other social media
- Reading meeting papers and background information
- Taking and sending photographs

They can also assist debate by facilitating contemporaneous research into relevant matters to inform contribution to the debate providing Access to Information Rules are not breached.

### **Etiquette**

At planning committee iPads and other hand held electronic devices need to be used with care, common sense and respect. In particular, it is important that respect and courtesy is shown to others participating in the meeting and the use of such devices should not give the impression to observers that a Councillor is not paying due attention to the meeting.

### **Acceptable Use**

- All devices should be set to silent during the meeting
- Devices may be used to follow agenda items or deliver pre prepared speeches
- Devices should be used sparingly, discreetly and unobtrusively, without disturbing others
- Consider the impression given to others, in particular members of the public attending the meeting

If, during the course of a meeting, the Chairman considers that an individual's use of hand held electronic devices has become inappropriate they will be asked to stop.

### **Potential Challenge**

The use of electronic hand held devices could be cited as grounds for a challenge by aggrieved parties, this is of particular significance to planning committee where Councillors are required to come to a decision on the merits of each application as presented to them in the committee papers and at the meeting. That is not to say that electronic devices cannot be used but that great care



must be taken to show that Members have listened to the debate and have not taken into account any irrelevant considerations.

Members need to be mindful that not all information on the internet is accurate and as such it is important that Members verify information they wish to introduce to the debate.

## APPENDIX 3: Development Control Scheme of Delegation

### Delegated to Strategic Manager Planning and Regeneration

To undertake all of the Council's functions in connection with planning including Listed Buildings, Conservation Area Consent, advertisement consent and certificate of lawfulness applications, planning enforcement and the preservation of trees and hedges.

### Limits, Controls and Conditions

This delegation is limited and shall not apply to:

1. Any application which is accompanied by an Environmental Impact Statement.
2. Any application which is defined as a significant departure from the adopted development plan as identified in planning circular 02/09 or in any successor document (see definition below) and where officers wish to approve the development.
3. Any applications which are recommended to be approved contrary to the requirements of the Development Plan.
4. Any applications made by or on behalf of the Council.
5. Any applications made by or on behalf of a District Councillor or his/her partner, children, parents, grandparents or siblings.\*
6. Any application made by an employee within the Development Control, Building Control and Local Planning Teams within the Planning and Regeneration service area or any employee of the Council of Principal Grade or above. Applications submitted by the partner of any of the persons referred to above will also be referred to the Planning Committee for determination.
7. Where a ward member requests, in writing, within 21 days of receipt of the weekly list or by the closure of any publicity which has been carried out on the application (whichever is the latest date), that an application be presented to the Planning Committee for decision.
8. Where representations by any person, body or organisation have been received (either in support or against the proposal) within the 21 day consultation/publicity period, a notice shall be sent to the Chairman of the Planning Committee and Ward Representative(s) giving 7

consecutive days to decide on material planning grounds or in the public interest whether the matter should be referred to the Planning Committee for a decision.

9. Any repeat application (where it is fundamentally the same scheme) which has previously been considered by the planning committee
10. Any application which the Strategic Manager for Planning and Regeneration considers should be referred to the Planning Committee for a decision.

11. **Definitions**

Significant departures are defined as the following in circular 02/09 where the Local Planning Authority wishes to approve the proposal in terms of the following: -

- Development which includes or consists of retail, leisure or office use and which:
  - 1) Is to be carried out on land which is edge of centre, out of centre or out of town; **and**
  - 2) Is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out: **and**
  - 3) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:
    - a. 5000 square metres or more: **or**
    - b. Extensions of new development of 2,500 square metres or more which when aggregated with existing floorspace would exceed 5000 square metres.
- Development having an adverse impact on the outstanding universal value, integrity, authenticity and significance of world heritage sites or their settings, including any buffer zone or its equivalent, and being development to which English Heritage has objected to and that objection not having been withdrawn.
- Playing field development where the land subject of the application:
  - 1) Is land of a local authority; or
  - 2) Is currently used by an educational institution as a playing field; **or**
  - 3) Has at any time in the 5 years before the application been used by an education institution as a playing field: **and**
    - a. Sport England has been consulted and has objected on one or more of the following grounds:
    - b. That there is a deficiency in the provision of playing fields in the area of the Local Planning Authority;
    - c. That the proposed development would result in such a deficiency; **or**
    - d. That the proposed development involves a loss of playing field and an alternative or replacement playing field is proposed, that alternative or replacement does not match (whether in quality, quantity or accessibility) that which would be lost.

Major development in flood risk areas to which the Environment Agency has made an objection that it has not been able to withdraw even after discussion with the Local Planning Authority.