

# WARBOYS PARISH COUNCIL

## MEMBERS' PLANNING CODE OF GOOD PRACTICE

### BACKGROUND

This Code of Good Practice has been prepared to support the drive to attain and maintain high ethical standards in local government. It is based upon a model prepared by the former Association of Council Secretaries and Solicitors in consultation with the former Standards for England, the former District Audit Service and the Local Government Ombudsman.

### INTRODUCTION

The aim of this code of good practice is to ensure that in the operation of the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of planning is to control the development and use of land in the public interest.

The Parish Council is a statutory consultee in the planning process. As a member of that authority, your role is to make decisions openly, impartially, with sound judgement and for justifiable reasons.

This Code of Good Practice applies to members at all times when involving themselves in the planning process. It applies equally to planning enforcement or planning policy issues as it does to planning applications. (This includes membership of both the Planning Committee and when acting as a member of decision-making meetings of the Council exercising the functions of the Planning Committee or when involved on less formal occasions, such as meetings with officers or the public, consultative meetings and any other formal or informal meeting of members relating to the planning process.)

References to officers in this Code of Good Practice relate to employees of the Parish Council.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early from the Clerk to the Council, preferably well before any meeting takes place.

#### 1. Relationship to the Members' Code of Conduct

- ◆ **Do** apply the rules in the Members' Code of Conduct first - these must always be complied with.
- ◆ **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of dealing with all planning matters. If you do not abide by this Code of Good Practice, you may put yourself at risk of being in breach of the Code of Conduct, a complaint to the Parish Council or

the Monitoring Officer of Huntingdonshire District Council or to the Police.

## 2. Development Proposals and Interests under the Members' Code

- ◆ **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with employees and other members.
- ◆ **Do** then act accordingly. **Where your interest is a disclosable pecuniary interest or a non-statutory disclosable interest:-**
  - **Do** disclose the interest and withdraw immediately from the room or chamber where a meeting is being held for the duration of any discussion and/or voting in the matter.
  - **Do** consider having declared a disclosable pecuniary interest or non-statutory disclosable interest whether you wish to make representations to the Planning Committee or Council in the same way as an ordinary member of the public is permitted under paragraph 71 of the Council's Standing Orders. If you do wish to do so, you should submit an application to the Clerk to the Council before the commencement of the meeting at which you wish to speak and this will be considered by the Committee or Council at the commencement of the meeting.
  - **Do** leave the room immediately after you have made your representations and before any debate commences.
  - **Don't** attempt to improperly influence the meeting.
  - **Don't** get involved in the processing of the application.
  - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable pecuniary or non-statutory disclosable interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
  - **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary or non-statutory disclosable interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have a disclosable pecuniary or non-statutory interest in a proposal to be put before a meeting, you will have to withdraw from the room whilst the meeting considers it, whereas an ordinary member of the public would be able to observe the meeting's consideration of it from the public gallery.)

## 3. Fettering Discretion in the Planning Process

- ◆ **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at the Planning Committee or Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how

you will vote on any planning matter prior to formal consideration of the matter at the meeting of the Planning Committee or Council and of hearing the officer's presentation and evidence and arguments on both sides. Fettering your discretion in this way and then taking part in the decision could put the Council at risk of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- ◆ **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for a proposal. (This applies where, through your significant personal involvement in preparing or advocating the proposal you will be, or could be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- ◆ **Do** consider yourself able to take part in the debate on a proposal when you are also a district and county councillor, provided:
  - the proposal does not substantially affect the well being or financial standing of the District or County Council;
  - you make it clear to the Parish Council that:
    - your views are expressed on the limited information then before you;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the District or County Council and you have had the opportunity to consider all of the relevant information; and
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the District or County Council; and
  - you disclose the non-statutory disclosable interest regarding your membership or role when the Planning Committee or Parish Council comes to consider the proposal.
- ◆ **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but it would be preferable for you to do so.
- ◆ **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- ◆ **Do** take the opportunity to exercise your separate speaking rights as a member under the Council's Standing Orders where you have represented your views or those of local electors before the meeting and fettered your discretion, but do not have a disclosable pecuniary or non-statutory disclosable interest. Where you do:

- you must give written notice to and obtain the prior permission of the Chairman that you wish to speak in this capacity before the meeting commences;
- remove yourself from the member seating area for the duration of that item, and
- ensure that your actions are recorded.

#### 4. **Contact with Applicants, Developers and Objectors**

- ◆ **Do** refer those who approach you for planning, procedural or technical advice to the Clerk.
- ◆ **Do** try and avoid any meeting with applicants, developers or groups of objectors unless it has been organised by officers. Where you feel that a meeting may be useful in clarifying the issues, you should never seek to arrange that meeting yourself. You should refer the request to officers to organise it. When a meeting is arranged, officers will ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Council or Planning Committee.
- ◆ **Do** otherwise:
  - follow the rules on lobbying in this Code of Good Practice;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Clerk any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

#### **In addition and in respect of presentations by applicants/developers:**

- ◆ **Do** try and avoid attending a planning presentation unless an officer is present and/or it has been organised by officers.
- ◆ **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- ◆ **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning Committee or Council in public.
- ◆ **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other members might vote.

#### 5. **Lobbying of Councillors**

- ◆ **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the decision making process to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

- ◆ **Do** remember that your overriding duty is to the whole community and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- ◆ **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality with the Monitoring Officer where its value is over £50 in accordance with the Members' Code of Conduct.
- ◆ **Do** copy or pass on any lobbying correspondence you receive to the Clerk at the earliest opportunity in order that it can be placed on the appropriate planning file and is open for inspection before a decision is made.
- ◆ **Do** promptly refer to the Clerk any offers made to you of planning gain or constraint of development, through a proposed Section106 Planning Obligation or otherwise.
- ◆ **Do** inform the Clerk where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise how to follow the matter up.
- ◆ **Do** note that, unless you have a disclosable pecuniary or non-statutory disclosable interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
  - listening or receiving viewpoints from residents or other interested parties as long as you make yourself equally available to those of differing viewpoints if requested to do so;
  - making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a parish councillor, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed that opinion or view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 6. Lobbying by Councillors

- ◆ **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a non-statutory disclosable interest and have to withdraw.
- ◆ **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the CPRE, Ramblers Association or a local civic society, but

disclose a non-statutory disclosable interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Planning Committee or Council that you have reserved judgement and the independence to make up your own mind on each separate proposal.

- ◆ **Don't** excessively lobby fellow members regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- ◆ **Don't** decide or discuss how to vote on any planning application or policy matter at any sort of political group meeting, or lobby any other member to do so. Political group meetings should never dictate how members should vote on any planning issue.

## 7. Site Visits

- ◆ **Do** try to attend site visits organised by the Council where possible.
- ◆ **Don't** request a site visit unless you feel it is strictly necessary because site visits can cause delay and additional cost. They should only be arranged where the expected benefit is substantial. This may be where
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a formal site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- ◆ **Do** ensure that any information which you gained from the site visit is reported back to the Planning Committee or Council so that all members have the same information.
- ◆ **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- ◆ **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- ◆ **Don't** hear representations from any other party with the exception of a fellow councillor who should focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- ◆ **Don't** express opinions or views to anyone.
- ◆ **Don't** enter a site which is subject to a proposal other than as part of an official site visit or by invitation. If you feel it is essential to accept an invitation to visit a site other than through attending an official site visit do exercise caution and ensure you comply with these good practice rules.

## 8. Public Speaking at Meetings

- ◆ **Don't** allow members of the public to communicate with you during the Planning Committee or Council's proceedings (orally or in writing) as this may give the appearance of bias.

- ◆ **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 9. Officers

- ◆ **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Clerk which may be incorporated into any report. Your attention is drawn to the danger of fettering your discretion on a matter which is covered in Section 3 of this Code.)
- ◆ **Do** recognise that officers are part of a management structure and only discuss a proposal with the Clerk or those officers who are authorised by them to deal with the proposal at a member level.
- ◆ **Do** recognise and respect that officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Planning Committee, Council or members.

## 10. Decision-Making

- ◆ **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- ◆ **Do** comply with section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- ◆ **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request an extension of time for comment from the District Council, request that further information and, if necessary, defer consideration of the proposal until the information has been provided and you have had an opportunity to consider it.
- ◆ **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officer's introduction to the matter.
- ◆ **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded.

## 11. Training

- ◆ Training on planning matters will be provided and updated as necessary. All members should endeavour to receive training to enable them to carry out their role properly and effectively.